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ABSTRACT

This manual is addressed to personnel in medical facilities, prosecutor's offices, police departments and social service agencies. It suggests a set of procedures as guidelines to provide sexual assault victims with strong support so that each one may come through the the experience a stronger person. The manual is divided into five chapters, dealing with investigation, medical treatment, counseling, prosecution and the child as victim. (BN)

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SEXUAL ASSAULT: A STATEWIDE PROBLEM

A Procedural Manual Prepared by and for

- Law Enforcement Personnel
- Medical Personnel
- Social Service Personnel
- Legal Personnel
- Concerned Individuals

Compiled and Edited by
Eileen Keller, Assistant Director
Minnesota Program for Victims of Sexual Assault

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PREFACE

Sexual assault is a humiliating and often terrifying and brutal crime, an act which violates a person's innermost physical and psychological being. It includes rape, same-sex assault, child sex abuse and incest and any other sexual activity which a person is forced into without his/her consent. Although each victim responds to the sexual assault in a different way, every victim needs strong support from family and friends as well as from medical, legal, law enforcement and social service personnel. It is hoped that with this support each victim may come through the experience a stronger person.

In many communities throughout Minnesota personnel in medical facilities, prosecutors' offices, police departments and social service agencies as well as individuals involved in community action groups are beginning to examine their agencies' response to sexual assault victims.* This manual is addressed to any of these agencies or communities throughout Minnesota. The recommended procedures should be considered as guidelines to be adapted to each particular community, taking into consideration the needs of that community as well as variations in services available, agency size, etc.

This manual is divided into five chapters: **Law Enforcement Investigation of Sexual Assault Crimes, The Medical Treatment of Sexual Assault Victims, Counseling the Victim of Sexual Assault, The Prosecution of Sexual Assault Crimes,** and **The Child as Victim.** Because the functions and procedures of law enforcement, medical, social service and prosecutorial personnel are highly interdependent it is recommended that the manual be read in its entirety.

*In some communities the efforts of agencies and community groups to re-examine their procedures have already resulted in innovative changes — both within the agencies and in the community at large. A few such communities have organized programs and task forces which coordinate services for sexual assault victims.

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LAW ENFORCEMENT INVESTIGATION OF SEXUAL ASSAULT CRIMES

I. INTRODUCTION

The following guidelines are intended for use by any law enforcement agency throughout Minnesota, irrespective of the size or make-up of that agency. It is recognized, however, that certain minor adaptations of the guidelines may need to be made to take into consideration variations in the size of the agency, geographical factors, etc.

Because effective criminal sexual assault prosecution relies on the combined efforts of law enforcement, medical, social service and prosecutorial personnel and agencies it is necessary, as a practical matter, to be fully cognizant of the professional responsibilities of one another when dealing with sexual assault victims. Law enforcement personnel are urged to familiarize themselves with the procedures presented in other chapters of this manual.

This Chapter, Law Enforcement Investigation of Sexual Assault Crimes, contains basic principles that should govern the investigation of sexual assault crimes. It states what kinds of situations the officers will most likely confront upon investigating a sexual assault case as well as what the officers' goals should be when investigating. The duties and responsibilities of the various officers involved in a sexual assault investigation, namely, the dispatcher, the investigating officers, and the detective, are described. Evidence that is normally required for a sexual assault prosecution and methods used to recognize, obtain, and preserve the evidence while maintaining the chain of custody are explained in detail. Bureau of Criminal Apprehension (BCA) services available for analyzing the evidence are also discussed.

II. GENERAL PRINCIPLES

Since the police/sheriff may be the first contact the victim has after the sexual assault, it is critical that law enforcement personnel be aware of their responsibility in providing for the needs of the victim. This responsibility is two-fold in nature:

1) Assisting, protecting and serving the victim in a humane, sensitive way that recognizes the physical and emotional trauma the victim has suffered; and
2) properly investigating the case, and gathering and preserving evidence necessary for possible prosecution of the crime.

A fine balance of these two roles is essential. A victim who is treated with kindness, patience and respect and who understands what the officer is doing and why, will be of far more assistance in the investigation and will usually be a better witness for the prosecution. At the same time, a thorough initial investigation will produce a stronger case for trial than a sketchy initial investigation where evidence has disappeared or been destroyed. The following guidelines are intended to assist law enforcement personnel in their attempt to achieve a balance of these two roles.

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A. *The Victim*

Sexual assault is a traumatic, life-threatening experience which usually leaves the victim feeling humiliated, degraded, distrustful, afraid and angry. Every victim responds to the experience in a different way. Some victims may appear relatively calm and respond to questions in a matter-of-fact manner, whereas other victims may be crying hysterically and unable to respond to any questioning. (A more thorough description of the victim's feelings and responses to a sexual assault is presented in Chapter Three, **Counseling the Victim of Sexual Assault.**)

In dealing with the sexual assault victim, it is essential that the officer communicate an understanding of the traumatic experience the victim has just been through. The officer can do this by stating directly, "I know you have just been through a terrifying experience, and if you feel uncomfortable at any time while we are talking, we will take a break until you feel able to talk about it." This gives the victim a feeling of control over the situation.

The officer should also explain what he/she is doing and why, so that the victim understands the need for each step in the investigation process. If the victim understands the reasons for the procedures, such as the need to ask very personal, intimate and detailed questions, he/she will be more willing to offer assistance and cooperation with the investigation.

Additional guidelines for dealing sensitively with the victim are discussed later under Interviewing the Victim, page 9.

B. *The Victim's Family*

The victim's family may also feel victimized by the sexual assault and may need support and calming from the officer. Sometimes parents, loved ones or friends will react with anger because they feel helpless to correct the situation. They may direct that anger towards the victim by blaming him/her for whatever happened or by showing feelings of distrust of the victim. Therefore, in general, the officer should not interview the victim in the presence of family or friends. The victim usually will not be as candid if family or friends are present and may not want them to hear the details at all. The officer should briefly inform the family of what happened and suggest that they not inquire into details unless the victim volunteers them. To do otherwise could lead to confusion and problems with the investigation.

If the victim indicates a desire to have a relative, close friend, or a victim support person present, the officer should contact that person to meet the victim either at the hospital or some other place that is convenient and at a time that will not interfere with the initial investigation. The officer must make sure that someone is present to comfort and be with the victim once the investigation has been completed. However, care must be taken to not let family or friends interfere in any way with the investigation.

C. *Sexual Assault Counseling Services*

A counselor or victim support person may be important for the victim's emotional adjustment or for family support. Law enforcement agencies should be familiar with the supportive services in the local community in order to inform the victim, and make a contact or referral if the victim so chooses. The type, extent and quality of service will vary with the community. Rape crisis centers may be of significant assistance to the police as well when they can work out mutually supportive operations and referral systems.

D. *Corroborating Evidence*

Ordinarily the only witnesses to a sex crime are the victim and the assailant. Although corroborating evidence, that is, evidence tending to prove the crime ultimately charged, is no longer required by Minnesota law, it can be critical in obtaining a conviction. A jury will rarely convict a defendant unless there is some corroborating evidence in addition to the victim's testimony. The evidence available in a sexual assault case may be simple in nature but of great corroborative value. Corroborative evidence may include the presence of sperm, blood stains, dirty or messy clothing or hair, minor abrasions or scratches, physical evidence to identify the scene, or evidence of a struggle. Even minor details such as the victim's recollection that there was a red light bulb in the ceiling of the room to which the defendant took the victim, if proven, will provide very important corroborating evidence. It is therefore essential that every bit of possible evidence be preserved and gathered immediately.

E. *The Victim's Statement As Evidence*

In a sex crime, statements made by the victim soon after the crime concerning the identity or description of the assailant or details of the sexual assault are admissible in court to corroborate the victim's testimony. In Minnesota, such statements made by the victim soon after the offense are admissible as evidence of the victim's prompt complaint, which is a specific exception in sexual assault cases to the general exclusionary rule against hearsay evidence. They are admissible under the rule of law that an immediate statement made under the influence of an exciting or traumatic event before the individual has an opportunity to reflect or to fabricate a story is likely to be reliable. This is not meant to imply that delayed reporting is likely to be false. Frequently, the police officer is the first person to whom the victim tells the story in any detail. If the police officer's interview with the victim occurs reasonably soon after the crime or reasonably soon after the victim was able to reach safety, the officer may be able to testify at trial what the victim related. Therefore, it is important for the police officer initially interviewing the victim to make a complete report of the victim's statement. In general, the officer should write the report in his/her own words rather than quoting the victim verbatim. This may avoid embarrassment later if the victim is unable to remember the exact words he/she used originally. In interviewing a child victim, however, the officer may want to quote the child's exact words.

F. *Evidence of the Victim's Prior Sexual Conduct*

Evidence of the victim's prior sexual conduct is no longer admissible under Minnesota law except in very limited circumstances. The victim's past sexual behavior can no longer be laid bare before the world. Only in rare instances will previous sexual conduct be admitted as evidence in court, such as previous sexual activity with the accused assailant. By sharing this important information with the victim, the officer may allay some of the victim's fears about reporting and/or prosecuting.

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III. BASIC DUTIES AND RESPONSIBILITIES OF THE OFFICERS INVESTIGATING A SEXUAL ASSAULT CRIME

A. *Dispatcher*

Since the police dispatcher may be the first person the victim contacts after the sexual assault, it is crucial that he/she respond to the call in a calm and supportive manner. The first responsibility of the dispatcher is to determine the victim's need for emergency medical care or immediate police protection. The dispatcher should then obtain the victim's name and present location, and dispatch patrol officers and an ambulance, if needed, to that location. If possible, the dispatcher should remain on the line with the victim until the patrol officers arrive, especially if the victim is alone and wants to stay on the line. The dispatcher should advise the victim not to bathe, change clothes, comb hair, touch any articles or furniture the assailant may have touched, or in any other way destroy possible evidence. If the victim is able to provide additional information in regard to the description of the assailant or a vehicle used, for example, the dispatcher should relay that information immediately.

The dispatcher should notify the hospital that a victim of a sexual assault will be arriving and should contact any person the victim may want present at the hospital, such as a family member, friend, or a victim support person (if that service is available in the community).

As soon as the police squad has arrived and has the situation under control, all other squads should leave the scene immediately to avoid confusion both at the scene and at the trial. The detectives squad or investigating officer and the laboratory personnel (where available) will be called, and should be the only officers present in addition to the initial squad of patrolmen.

B. *Responding Officers*

The officers who initially respond to a sexual assault call usually provide the bulk of the evidence for the prosecution. Therefore, a thorough and accurate initial investigation is essential.

1. *Division of Responsibility*. Whenever possible, two patrol officers should respond to the initial sexual assault call. This allows one officer to undertake the sole responsibility for dealing with and questioning the victim while the other officer is able to assume primary responsibility for preserving the scene, gathering evidence, searching for the suspect, seeking assistance from detectives and the crime laboratory, and notifying the hospital, and any person the victim may want present for support.

   The initial responsibility of the first officer is to assess the victim's need for emergency medical care and, if needed, to provide transportation to the hospital or call an ambulance if the dispatcher has not already done so. If the victim does not need emergency medical care the officer should begin a preliminary investigation. In doing so he/she should constantly be aware of the victim's needs while seeking to obtain the necessary facts such as the assailant's identity and/or description, location and time of the assault, etc.

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Questions raised by other officers should be directed to the first officer rather than to the victim in order to avoid subjecting the victim to repeated police questioning. This is not intended to inhibit the initial interview but rather recognizes the severe emotional stress the victim may be experiencing as a result of the sexual assault.

The first officer should remain with the victim throughout the investigative procedure explaining to the victim and the family members or friends the police procedure and its rationale, what is being done to apprehend the suspect, and the investigative and medical procedures that will follow. The officer should accompany the victim to the hospital for medical treatment and an evidentiary examination and, if possible, remain with the victim until the proper medical personnel and/or support person is available. Under no circumstances should the officer be present in the examining room during the examination itself.* The officer should then assure the victim that he/she is available if the victim needs him/her. The victim should also be asked where he/she may be contacted by a detective for a detailed interview and a formal statement (if this did not occur on the scene). If a suspect is in custody the investigation must be completed within 36 hours and the officer should ask the victim to be available during that time.

Before leaving the hospital the officer should arrange with medical personnel a time for obtaining the evidence collected at the hospital.

2. *Preliminary Interview of the Victim.* The responding officer has a responsibility to interview the victim and write the initial report of the crime. The purpose of this interview should be to briefly obtain information concerning the basic elements of the crime (location and time of the offense, an accurate description and/or identity of the assailant), as well as information needed to determine what evidence might be available. The officer should begin by explaining the investigative process to the victim: what information is needed and why, the kinds of evidence needed, the purpose of the medical examination, both to discover and treat any injuries and to gather evidence for possible prosecution. He/she should also re-emphasize to the victim the importance of *not* bathing, changing clothes, or in any other way destroying possible evidence.

   In interviewing the victim, the officer should allow the victim to talk freely and spontaneously, but he/she should not question the victim concerning details of the sexual aspects of the crime except as they relate to evidence that must be preserved and to establish what crime was committed. If the officer attempts to question the victim about minute details not volunteered, the victim is likely either to clam up or to tell him a partial story which will later cause problems in any trial. The initial investigating officer, under that stressful situation, will probably not have the time to establish the same kind of rapport with the victim that the investigating detective will later be able to establish, so the inquiry concerning details should be left to the detective and the prosecutor.

   Although the initial interview should be as brief as possible, it is crucial that the officer be aware of the principles of interviewing which are discussed in greater detail under Interviewing the Victim, page 9; and in Appendix A, "Crisis Intervention and Investigation of Forcible Rape", M. Bard and K. Ellison; and Appendix B, "Interviewing the Rape Victim", International Association of Chiefs of Police. Both articles provide techniques on what it means to treat a sexual assault victim "sensitively".

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*Except in the case of obtaining a dying declaration.

3. *Writing the Report.* Each officer should write his/her own report of the initial investigation rather than writing a joint report. In writing the report it is important for the officers to avoid the use of ambiguous or qualified language such as "alleged" victim, which may be used by a defense attorney at trial to imply that the officer did not believe the victim's story. The report should be as complete as possible but stated in the officer's own words rather than quoting the victim directly. Paraphrasing the victim's statement in the officer's own words is advised so that the victim will not appear to be lying when he/she cannot recall word for word what the officer was told.

4. *Witnesses.* The officer who is not interviewing the victim should obtain the names, addresses and phone numbers of all witnesses who saw the victim before the incident, who may have seen the victim with the suspect, anyone who may have seen or heard any part of the incident itself, and everyone to whom the victim spoke after the incident and before the patrol officers arrived. Statements from those individuals will be taken later by the detective and may provide corroborating evidence at trial.

5. *Gathering and Preserving the Evidence at the Scene.* If a mobile crime laboratory or the services of the BCA or Sheriff's Office are not available, gathering and preserving the evidence at the crime scene will be the primary responsibility of the patrol officers. A detailed checklist of evidence needed for prosecution is presented later in this chapter. It is critical that the chain of custody of evidence be maintained by all personnel involved in collecting the evidence.

6. *The Medical Examination.* Time is critical in the obtaining of medical evidence from the victim. Sperm and seminal fluid can be recovered from the victim if the examination takes place soon enough. When the officer accompanies the victim to the hospital for a medical examination, he/she should ask the examining physician and any sexual assault counselors who may be present not to question the victim about irrelevant details of what happened. Obviously, the physician must find out all relevant information for the medical examination, but ordinarily does not need to question the victim about the details of the crime itself. The officer should make sure the physician knows what tests are necessary and that the consent for release of medical information form is signed. If there is any bloody clothing or blood stains at the scene, ask the physician to take and preserve a blood test as well. These will be preserved for possible analysis. A more thorough discussion of the medical examination is presented later in this chapter.

C. *Detective*

One supervisor should act as coordinator to read and assign all sexual assault cases. One detective should then be assigned to be responsible for each sexual assault case from the beginning of the investigation through trial.

In smaller police departments and agencies the functions of the initial patrol officer and the detective may be the combined function of one person. It will be essential for that person to determine the most feasible time for a detailed interview with the victim. If a suspect is in custody, however, the investigation must be completed within 36 hours.

1. *Interviewing the Victim.*

> *Please read Appendix A, "Crisis Intervention and Investigation of Forcible Rape", M. Bard and K. Ellison; and Appendix B, "Interviewing the Rape Victim", International Association of Chiefs of Police, in conjunction with this section. Both articles provide excellent information on effective and sensitive police interviewing techniques.*

The time to establish a supportive, cooperative relationship between the investigator and the victim is as soon after the crime report as possible. However, the detective investigator must be able to recognize those times when the victim's physical or emotional condition makes such an immediate interview unwise or impossible.

a. *Setting the Stage for the Interview.* The investigator should first look to the victim's safety, comfort, and privacy. If the attack took place at the victim's home, he/she may like to have the interview at a neighbor's home, for example. In any case, the setting should be comfortable and private, with as few interruptions as possible. Since a relative or friend may be with the victim, it is useful to explain to both of them the purpose of the interview and the necessity, for the sake of both the victim and the police, for privacy, but the friend or relative can be asked to remain nearby.

The investigator should be prepared to take as extensive notes as possible, consistent with the need to keep the interview from becoming impersonal. It is preferable, however, for the investigator to start a flow of conversation before taking any notes. This can be facilitated by first focusing on the victim's feelings and needs, proceeding to a discussion of how the victim and investigator can work together, and finally, explaining what information is needed. By this point, it should be easier for the victim to talk in more detail, and the investigator should begin to take notes.

b. *Conducting the Interview.* The investigator will want to obtain as much information as possible, bearing in mind the importance of balancing the need for facts with the need to alleviate the victim's distress during the interview. Because some of the questions the investigator will have to ask may embarrass the victim, they should be prefaced with an explanation of why the information is needed. If the interview is put in the context that the victim is not to blame and that many other persons have been victimized by rapists, it may be easier for the victim to talk about the attack. Similarly, if the investigator does not make moral judgements about the circumstances of the sexual assault (such as hitchhiking), or show shock or disdain about the nature of the sexual acts that took place, he/she will not stifle the victim's responsiveness. Questions about the assailant's behavior that are open-ended (i.e. questions which require more than a yes or no answer) will enable the victim to speak more freely and not influence his/her account. If the investigator is able to gear his/her terminology to the level at which the victim is most comfortable, it will make the interview less distressing and, therefore, more informative.

Despite such an approach, some victims may naturally be reluctant to discuss the more intimate details of the crime, and if they cannot be encouraged to do so at this time, they should not be coerced into it. The investigator should not use this reluctance as a means of avoiding subjects he/she finds unpleasant. This simply forces the need for a second interview without necessarily sparing the victim's feelings.

From time to time throughout the interview process, the investigator should attempt to see if the victim can recollect identifying characteristics of the assailant — appearance, clothes, unusual features, voice, words used, and so on. If nothing new is triggered by these inquiries, the officer should proceed with other aspects of the interview rather than probing.

2. *Follow-Up Investigative Work.* The standard law enforcement procedures for locating or apprehending a suspect should be followed in sexual assault cases. If at all possible the same detective who conducted the earlier interview with the victim should also conduct the follow-up investigation. Sensitive treatment of the victim is important both as a matter of human concern and as an essential factor in eliciting the most accurate information from the victim.

   a. *Identification Procedures.* If the police have a suspect in custody who is not known to the victim, a line-up is often preferable to photograph identification. If there appears to be a prime suspect who is not in custody, a photo line-up should be utilized. At least eight to twelve photographs of similarly appearing persons should be shown. The photo line-up procedure should be handled very carefully since the victim may well point out one or more pictures looking like the assailant, which would then make any subsequent identification by the victim worthless in court and probably prevent prosecution of the suspect. It is recommended that a joint police-county attorney policy be established on this procedure to avoid evidentiary problems at trial.

   b. *The Modus Operandi File.* Every department, whether or not it has a specialized sexual assault investigation unit, should develop, update, and improve an MO file for sex offenders. The raw material for this file is made up of the persons in the area who have been convicted of such offenses, those who have been arrested on such charges, and others whose identity may be unknown but who have been reported and described by sexual assault victims — plus all the physical, behavioral, and other identifying characteristics associated with each such person. The investigator should research the MO file to match all possible suspects against the victim's testimony in the interview.

   In larger metropolitan or multi-jurisdictional agencies, computerizing the MO files may facilitate the storage, retrieval, and analysis of the information. In smaller jurisdictions or rural areas, law enforcement agencies may well benefit from establishing regional-type MO files within the area.

IV. GATHERING THE EVIDENCE: CHECKLIST IN SEXUAL ASSAULT CASES

Most of the evidence will be preserved and gathered by the initial officers, with the exception of intimate details to be learned from the victim by the detective assigned to the case. Both the initial investigating officer and the detective should *explain* to the victim why the following information and evidence is needed.

A. *Obtaining Facts*

Law enforcement and the county attorney in each jurisdiction should cooperatively develop procedures to determine which of the following facts will be obtained by law enforcement personnel and which by the prosecuting attorney.

1. *Victim.* Name, age, home and work addresses and phone numbers, marital status, number of children, time of last intercourse if within the 24-36 hour period prior to the sexual assault.

2. *Offense.* Location, exact time, details of how the sexual assault occurred, what happened prior to the assault and after it occurred, use of weapons or force.

3. *Suspect.* Name and address, if known, or complete description of suspect, car, license plate, etc. Nature of any contact with the suspect prior to the date in question — when, where, for how long, type of contact.

4. *Witnesses.* Obtain names, addresses and phone numbers of all parties who saw the victim before the incident, who saw or heard any part of the incident, who saw the victim with the suspect, or who talked with the victim after the incident and before the police arrived. Each of these individuals should be interviewed by the detective and statements taken from anyone with relevant information or to whom the victim stated what happened before the police arrived. This should be done in order to preserve the victim's statements of prompt complaint and for such individuals to report in testimony at trial.

B. *Physical Evidence From the Scene*

It is the responsibility of the initially responding officers to make sure the scene is preserved until the mobile crime laboratory is available. If no mobile crime laboratory is available the responding officers should see to it that fingerprint processing is completed, detailed photographs of the scene are taken and a diagram of the scene is made prior to disturbing the scene. They must also see that relevant articles are seized, properly marked and inventoried. *Paper* bags, not plastic, should be used to hold any evidence with human secretion (blood, semen, etc.) to prevent deterioration.

If the scene is not available, but can be ascertained, the detective should obtain a search warrant, where indicated, to investigate the scene and to photograph and make a diagram of it, as well as to seize any relevant articles including any items identifying the room or area that the victim recalls and can describe.

C. *Physical Evidence From the Victim*

1. Any evidence-bearing or damaged clothing worn by the victim should be obtained

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at the hospital, after the victim is provided with a change of clothes.

2. A written description of evidence of a struggle, such as damaged or messing of clothing or hair, or any signs of physical trauma in the victim should be made in the report.

3. Close-up photographs should be taken of any injuries to the victim no matter how minor. Hospital personnel should photograph any injuries of the victim's genetalia during the medical examination. Police personnel should also take photographs of bruises and injuries, especially if the particular police station is equipped with controlled lighting conditions, but should not re-photograph injuries of the victim's genetalia specifically.

4. Medical examination of the victim.

   a. The hospital should be notified prior to arrival so that personnel and an examining room can be prepared.

   b. The officer(s) should not be present in the examining room during the physical examination of the victim.*

   c. The victim should be encouraged to sign a medical waiver, authorizing the release of the medical reports to the appropriate police and prosecuting agencies. The victim should be informed that there is no obligation to prosecute by reporting the crime or by signing the medical waiver.

   d. The medical protocol section of this manual contains a suggested procedure for the medical examination of sexual assault victims. In general, the medical examination should include a pelvic examination, blood and urine samples for VD and pregnancy tests, blood pressure, pulse, temperature, etc.

      Any evidence of abrasion, bruises, scratches, or other injuries should be described on anatomical drawings or photographed (by the doctor or by a nurse if they are located in private areas) and reported by the doctor in detail. If anal or oral intercourse occurred, the doctor should make the appropriate examinations for the presence of seminal fluid.

   e. The officer should receive the following evidence from the doctor or nurse:

      1) *Victim's clothing (everything relevant)* unless the victim must be taken home to get other clothing first.

      2) *Photographs taken by the hospital*: The officer should note in his/her report whether or not photographs were taken by hospital personnel and, if so, by whom. The film itself, however, should be kept and developed by hospital personnel.

*Except in the case of obtaining a dying declaration.

3) *Fingernail scrapings* in sealed containers, if relevant.

4) *Pubic hair combings* together with the comb used, in a sealed envelope and plucked hairs from the victim, in a separate sealed labeled envelope.

5) *Blood samples*, with a preservative.

6) *Swabs/Smears* — vaginal, anal, etc.

7) *Saliva samples*, collected and air-dried on a piece of cloth or gauze

f. All evidence received must be marked with the victim's name, date, hospital number, name of person taking evidence, name of any other person in the chain of evidence, and the name of the officer receiving it. It is helpful to mark items in the same locations to facilitate court identification. All items needing refrigeration should be properly preserved.

D. *Physical Evidence From the Suspect*

In addition to photographs of the suspect's person, clothing and any injuries, and the taking of the suspect's clothing, a search warrant or court order should be obtained for obtaining a blood sample and samples of head, chest, or pubic hair if relevant to evidence found on the victim or at the scene of the crime, to be analyzed at the BCA for further identification of the suspect. If the suspect is arrested shortly after the crime, and appears to be intoxicated, an immediate blood test should be done to determine the alcohol or drug level, and a detective should consider making a video tape of his/her interview with the suspect to show that the suspect understands what is going on and is capable of making decisions.

E. *BCA Laboratory Capabilities*

1. *Introduction.* The major types of evidence found in crimes of sexual assault are blood, semen, hairs and fibers. The following discussion will explain the necessity of control samples and what results can reasonably be expected from the various evidence types.

2. *Information Determinable by Blood Tests.*

a. Determine whether blood is human or animal origin.

b. Classification of dried blood stains into one of four major groups of "O", "A", "B", and "AB". Additionally, blood may be subgrouped in several other factors such as Rh, PGM, EAP, and other blood group systems, depending on size and sample condition.

c. Classification of blood from each person involved to determine the possible source of the dried stains. NOTE: It is of little value to show that blood on a suspect could have come from the victim without also showing that this blood *could not have come* from the suspect himself/herself or one of his/her associates.

d. Identification of human blood as coming from a particular person is *not* possible. Also the age of a dried stain is not possible to determine.

3. *Information Determinable From Other Significant Body Fluids.*

a. *Seminal stains —*

1) Their identification on the victim's clothing, in vaginal swabs, or at the scene can be of value in corroborating claims of a victim.

2) If the suspect is a *secretor* his blood group can be determined from the seminal fluid. Additionally the PGM enzyme is present in seminal fluid which can also be determined and compared to that of a suspect.

3) Blood controls are necessary to determine the PGM enzyme present in the suspect and victim. Saliva controls are necessary to determine each involved person's secretor status.

b. *Differentiation of secretors and nonsecretors —*

1) Accomplished by using saliva controls from all involved persons.

2) Secretor — One of about 80% of the population who has in his/her other body fluids (saliva, semen, perspiration, etc.) the same ABO blood group factors which are present in his/her blood.

3) Nonsecretor — One of about 20% of the population who does not have ABO blood group factors in his/her other body fluids.

c. *Saliva stains —*

If present on cigarette butts or clothing it may be of value for determining the blood group of the person who deposited it if this person was a secretor.

d. *Limitations on seminal and saliva stain grouping —*

1) Semen is often mixed with urine or vaginal secretions of the victim making grouping tests inconclusive.

2) The amount of blood group factor present on a cigarette butt or in a seminal stain may be insufficient to give conclusive grouping tests.

4. *Information Determinable From Hairs and Fibers.*

a. While hair and fiber examinations are circumstantial from an evidentiary standpoint, they can corroborate other evidence or testimony.

b. *Hairs* —

1) Hairs can be identified as animal or human in origin.

2) If human it can be sometimes determined if the hair was damaged, if the hair was torn in its removal, and the possible area of the body which the hair originated, such as head vs. pubic. Age and sex cannot, generally, be determined from a hair.

c. *Results of hair comparisons* —

1) Hairs match in microscopic characteristics and could have originated either from the same individual or from another individual whose hair exhibits the same microscopic characteristics.

2) Hairs are dissimilar and did not originate from the same individual.

3) No conclusion could be reached.

d. Control hair samples should consist of at least 12 full length hairs *pulled* from different locations on the head or pubic area.

e. *Fiber examinations* —

1) Identification as to type of fiber such as animal, vegetable, synthetic, or mineral.

2) Determinations as to type, color, size, weave, and overall microscopic appearance are made between questioned fibers and knowns. A positive match indicates a possible common origin.

3) Submit entire garment for control samples.

5. *Information Concerning Control Samples.* Most laboratory examinations are comparative in nature and a meaningful interpretation of results is often not possible without control samples. Consequently, as a general laboratory policy, blood grouping, secretor grouping, and other comparative examinations will be performed only after the appropriate controls from all persons involved have been received.

APPENDIX

CHAPTER ONE

APPENDIX ONE-A

*Crisis Intervention And Investigation Of Forcible Rape**

By
Morton Bard and Katherine Ellison

MORTON BARD is a professor of social psychology at the Graduate School and University Center of the City University of New York. His interest in human crisis began with extensive research on the psychological impact of cancer and radical surgery. Dr. Bard has directed a number of innovative community-oriented projects and organized the first Family Crisis Intervention Program within the New York City Police Department. His current focus is on crisis intervention and interpersonal conflict management in the police function.

KATHERINE ELLISON is a doctoral student in social-personality psychology at the Graduate Center of the City University of New York. For the past year, she has served as consultant to the Sex Crimes Analysis Unit of the New York City Police Department as a trainee in urban psychology under an NIMH training grant.

THE TRADITIONAL FOCUS of the police has been on law enforcement: the solution of crime and the apprehension of offenders. However, it has become almost a cliche to point out that analyses of the police function reveal that they have increasingly fallen heir (estimated to occupy between 80 and 90 percent of their time) to an increasing array of important human service functions. Traditional training gives them few tools to aid them in performing these functions. If the police are to provide these human services in the manner most satisfactory both to the public and to the officer, it is essential to draw upon the knowledge in other fields related to human behavior. This does not mean that police officers should be made over into psychologists or social workers, rather it means that they should combine knowledge from these fields with their own unique experiences and expertise to perform all aspects of their job with maximum effectiveness, safety, and satisfaction.

Both law enforcement and human service functions are combined in an officer's dealings with a victim of forcible rape. This paper will deal with ways in which the police can use psychological knowledge both to benefit rape victims and at the same time to enhance their ability to apprehend offenders and close their cases satisfactorily.

The handling of rape investigations with psychological insight not only benefits the victim in terms of future psychological functioning, but also results in greater job satisfaction for the officer. In addition, it has ramifications in a larger sphere: "the word gets around," and an image is projected to the public of an authority with psychological and technical competence. This must lead not only to greater public cooperation but also to a greater sense of security for the public at large.

CRISIS THEORY: THE BACKGROUND

The body of psychological knowledge known as crisis theory is particularly useful in enlarging an officer's understanding of the victim's psychological state and reactions, of the way the victim views the situation, and of the officer's role in relation to that event.

Modern crisis theory had its origins in 1942 when a Boston psychiatrist, Erich Lindemann, and his colleagues from the Harvard Medical School, became involved with the victims and the families of victims of the Cocoanut Grove fire.[1] This terrible nightclub conflagration, in which almost 500 lives were lost and many more people were badly hurt, had a major impact on the city of Boston.

Lindemann's work with survivors, their relatives, and friends, produced many ideas about how to deal with victims in crisis. This work has been enlarged and elaborated on by other researchers in the field. Much of the work that has been done has dealt with people in psychiatric crises, while practical applications in other areas have been slower to develop. This paper will suggest that crisis intervention theory has particular relevance to the police especially in their interactions with the victims of crimes against the person, particularly the crime of forcible rape.

CRISIS AND ITS ASPECTS

Crisis may be interpreted in a wide variety of ways, but common to most definitions is the idea that it is a turning point in a person's life. *It is a subjective reaction to a stressful life experience, one so affecting the stability of the individual that the ability to cope or function may be seriously compromised.* Crisis comes in many kinds and degrees. An event that may be of crisis proportions for one person may have less effect on another, but there are some situations that may be considered crisis inducing for any individuals who experience them.

Crime victimization is one of the most stressful events in life. While it is not usually seen in crisis terms, it has all of the qualities that make for crisis. People tend to react to crime with the behavior that one sees in other, more obvious, crisis-inducing situations.

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[1] Lindemann, E. Symptomatology and Management of Acute Grief. *American Journal of Psychiatry*, 101. 1944.

As every officer realizes, people respond differently to having been victims of crime. While highly personal reactions to stress make it difficult to suggest a formula approach to people in crisis, it *is* possible to define some aspects of a situation that will typically be perceived and reacted to as a crisis. It may be useful to discuss important characteristics of stressful situations that result in a crisis reaction.

A. Stress

1. *Suddenness.* Stressful life events that are sudden tend to have a crisis impact. When a situation comes on slowly, people are able to readjust their psychological defenses slowly to cope with it. The death of a loved one who has been dying slowly over months or years usually has less crisis impact than a sudden, unexpected death.

2. *Arbitrariness.* A situation that is arbitrary usually is experienced as a crisis. This is the sort of situation that seems unfair, capricious, and highly selective; it seems to happen in a no-fault, "out of the blue" way, resulting in the "why me?" phenomenon. An out-of-control auto selectively hitting one pedestrian in a crowd is an example of arbitrariness.

3. *Unpredictability.* Closely tied to arbitrariness and suddenness is unpredictability. In everyone's life there are normal and predictable developmental crises for which one can plan: marriage, a new job, a school examination, elective surgery, or any number of other events that are stressful but that can be predicted as being such with greater or less accuracy. Crises that can be anticipated lend themselves to planning so that some of the severity of the impact may be reduced. On the other hand, there are those crises which cannot be predicted. They are precipitated by wholly unforeseen events such as natural disasters, serious accidents, or crimes. It is the unpredictable that further confounds and complicates the stressful event leading to a crisis reaction.

B. Reactions to Stress

1. *Disruptiveness.* A crisis reaction has the characteristic of disrupting normal patterns of adaptation. Normally all of us have defenses which operate all the time to preserve the sense of "self," that is, to protect the self against the normal ebb and flow of life's events. We stay on a pretty constant course that way. But under the impact of a crisis-inducing situation, those defenses are disrupted and functioning suffers. Sleeping and eating patterns may become disturbed, work inhibitions may develop, attention and concentration become difficult.

2. *Regression.* Often individuals regress, that is, emotionally they revert to a state of helplessness and dependence that characterizes an earlier stage of development. When in a crisis, an otherwise mature and effective person behaves almost like a child in seeking support and nurturance, guidance, and direction from those regarded as strong and dependable.

3. *Accessibility.* With characteristic defenses disrupted in a state of helpless dependency, individuals in crisis are extraordinarily open and suggestible. This provides a unique opportunity to affect long-term outcomes.

One of an individual's most basic needs at this time is to ventilate feelings—to be able to talk about what has happened, to "get it out of your system." At this point sensitive intervention can help the person work through turbulent feelings about the experience and can minimize the long-term damage to psychological functioning.

If there is insensitive intervention that discourages ventilation, the individual quickly regroups his defense mechanisms and attempts to use them, often in extreme forms, to deal with the crisis. The defenses, instead of being appropriate reactions to a crisis situation, might harden into inappropriate habit patterns. For example, a common defense mechanism found in victims of crime is repression; they "forget" what has happened to them and can give only the barest, most confused details to the investigating officer. (One psychological theory tells us that this forgetting is only apparent and that the events continue to influence behavior.) Victims may tend to become paranoid and to feel someone is following them, or that the environment is dangerous, or that the offender is lurking nearby, even when this is not possible. They may develop nightmares, compulsions, or excessive, unreasonable phobias. Such defensive reactions often hinder not only the initial investigation, but also the successful legal pursuit of the case when the offender is apprehended and the case comes to trial. The person who "can't remember," who refuses to leave his or her room, and who fears all strangers can hardly be an ideal witness.

The disruption that occurs with crisis may become apparent immediately or there may be a delayed reaction. A police officer often will see a victim of serious crime, such as rape, who seemed calm and unconcerned at the time, but who, three or four weeks later, will need psychiatric treatment or be hospitalized. She may even call the officer who investigated the case and complain of acute or chronic insomnia, or phobias, or that she is depressed and cannot stop crying, and the like. Because crisis-symptoms might not be evident immediately but may show up after some period of time, the officer must act as though the situation is of crisis-proportions.

CHARACTERISTICS OF SUCCESSFUL INTERVENTION

Given the elements that make for crisis, the question then becomes, what are the basic elements that contribute to dealing successfully with a person in crisis? Specifically, what should a police officer do to help the person in crisis regain equilibrium while, at the same time, furthering his own work?

Police have several advantages as crisis intervention agents. Those who have worked with the crisis concept have emphasized the importance of earliness of the intervention. Being on the scene early allows one to take advantage of the period when the victim's defenses are down, when he/she is open and accessible to authoritative and knowledgeable intervention. The police officer is there early simply because people in crisis turn first to the police, especially when the crisis is precipitated by crime. Because the officer is on the scene first, actions taken can critically affect, either positively or negatively, the victim's subsequent behavior.

Almost as important as the immediacy is the question of authority. Most professionals in our society are seen as authority figures and their ability to perform their duties is enhanced by this aura of authority. Professional people are expected to be competent, to be able to do their jobs well. Because professionals are expected to be competent, those seeking their services act in ways that will facilitate this competency; for example, people listen and follow directions.

Some professionals have learned to take advantage of the public confidence that comes with authority. In the field of medicine, it is common knowledge that most of what a doctor cures has nothing to do with anything that is specifically wrong with people. At least 70 percent of the time of a general practitioner is devoted to functional disorders, i.e., with ailments that are basically psychological in origin. (Not unlike the 80 percent of police time being concerned with non-crime functions.) What people are cured by is a kind of laying on of hands. The doctor has come to have enormous authority in the eyes of people and they turn to him for the satisfaction of psychological as well as physical needs. In the course of his training he learns how to use this authority in helping patients feel better.

Similarly, a police officer has considerable authority, both real and symbolic. The officer is the symbolic representation of everything from parent to the state. This is especially so when people are in trouble; people turn to the police to help in all sorts of difficulty, from a cat on the roof, to disputes with landlord or spouse, to emergency illness, to rape and robbery. Trouble is the business of the police, and society grants them much authority to help them deal with it. They must learn to use this authority. Because the police, by the nature of their job, have immediacy and authority, their behavior toward the individual in crisis must have impact upon both short and long-term adaptions of such people.

IS RAPE A SEX CRIME?

It is common to regard rape as sex crime. However, there is reason to question this view. Indeed, looking at it in the traditional way may well create a set in the police investigator's thinking that is dysfunctional. That is, to regard the act primarily as sexual in nature may distort the view of investigating officers, giving them a sense that they are dealing with something that really belongs in the area of morality. If one looks upon rape as a crime against the person, one may be more disposed to see it as one would view other aggressive crimes, such as robbery, assault, etc.

The difference in point of view may have a significant effect on the investigator's handling of the case. Despite the new morality, in our society sex is still a subject that is highly charged emotionally, and is difficult to deal with coolly and objectively. Even the most hardened officer, for example, often reports difficulty in dealing with the case of a child who has been sexually molested. The special feelings in our culture about sex are revealed by the fact that, in many states, laws dealing with sex crimes differ significantly from laws dealing with other crimes against the person. For example, a woman carrying a purse is ordinarily not considered to be "asking for" a mugging, but a woman in a short dress is often accused of "asking" to be raped. No other crime has such stringent corroboration rules or requires such blameless character and conduct on the part of the victim.

Recent research on rape[2] suggests that the intent of the offender is more often aggressive than sexual to prove his own masculinity and invulnerability by scape-goating and degrading the victim. Contrary to popular belief, the average rapist probably is not someone for whom normal sexual outlets are unavailable. Often too, the crime may follow a fight with a mother, a girlfriend or wife, and be a displacement of hostility against that woman.

RAPE IN THE CONTEXT OF CRIMES AGAINST THE PERSON

To understand the impact of rape, it would seem appropriate to examine it in the context of other crimes against the person as they are experienced by the victim. All crimes against the person can be said to be violations of the self[3] and, as such, precipitate crisis reactions.

A burglary is such a crisis-inducing violation of the self. People usually regard their homes or apartments as representative of themselves. In an important symbolic sense, their homes are extensions of themselves. It is, in the most primitive sense, both nest and castle. Particularly in a densely populated, highly complex environment it is the place that offers surcease and security. Each nest is constructed uniquely: each is different, just as individuals are different. When that nest is befouled by a burglary, it is not so much the fact that money or possessions have been taken, but more that a part of the self has been intruded upon or violated.[4]

In armed robbery, a somewhat more complex violation of self takes place. While in burglary, the victim is not directly involved, here the violation of self occurs in a somewhat intimate encounter between the victim and the criminal. In this crime, not only is an extension of the self (property, money, etc.) taken from the victim, but he or she is also coercively deprived of independence and autonomy, the ability to determine one's own fate. That is, under threat of violence, the victim surrenders autonomy and control, and his or her fate rests unpredictably in the hands of a threatening "other." This kind of situation must have a profound ego impact.

Now let us go a step further on the scale of violation of self to assault and robbery. Here there is a double threat: the loss of control, the loss of independence, the removal of something one sees symbolically as part of his "self," but now with a new ingredient. An injury is inflicted on the body, which can be regarded as the envelope of the self. The external part of the self is injured, and it is painful, not only physically, but internally in ego terms as well. Victims are left with the physical evidence reminding them that they were forced to surrender their autonomy and also of the fact that they have been made to feel like less than adequate people . . . a visible reminder of their helplessness to protect or defend themselves.

In this discussion we have moved from considering the implications of the violation of self as it relates to the extension of a person (burglary), to the loss of control and autonomy as well as part of the self (armed robbery), then to considering the insult to the envelope of the self as well as the loss of autonomy (assault and robbery). Now to the ultimate violation of self (short of homicide[5]) forcible rape. In the crime of rape, the victim is not only deprived of autonomy and control, experiencing manipulation and often injury to the envelope of the self, but also intrusion of inner space, the most sacred and most private repository of the self. It does not matter which bodily orifice is breached. Symbolically they are much the same and have, so far as the victim is concerned, the asexual significance that forceful access has been provided into the innermost source of ego.

From an ego-psychological point of view, this kind of forceful intrusion into interior space would have to be one of the most telling crises that can be sustained, particularly since it occurs in the context of the moral taboos which traditionally have surrounded the sex function. Indeed, to view rape as purely a sex crime encourages the search for possible sources of satisfaction in the experience for the victim. Actually, there is little opportunity for gratification in the context. For example, if one focuses only on the sexual, one would be tempted to minimize the effects of rape on women with considerable sexual experience. This is not the case. That is why promiscuous women or prostitutes, for whom sexual activity is certainly part of their normal adaptive pattern, will experience rape as a crisis. For all women the focus is upon the intrusion and the violation of self; even prostitutes, for whom sex is a commodity, there is a need to have a sense of control, a sense of autonomy. When this is taken from any woman, her defenses will be incapable of protecting her ego.

Adding to the victim's distress over violation is her awareness of cultural myths about rape, leading to fears of how friends and relatives will react toward her, and perhaps guilt feelings that she surrendered under duress, to a "fate worse than death." In this fearful, disrupted state, she sometimes comes to the police.

IMPLICATIONS FOR THE INVESTIGATOR

The implications of all this for police investigators are truly profound. If officers realize the crisis significance of rape and have an understanding of their role, particularly in terms of its immediacy and authority, they can be considerably aided in achieving a successful outcome of the investigation. Remember that an individual in crisis may be in a state of regression, and it is natural in such a state to try to defend the self by repressing the noxious experience. While regression provides an opportunity for fostering a relationship with the victim, repression may inhibit the communication of significant information.

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[2] Amir, Menachim. *Patterns in Forcible Rape.* University of Chicago: Chicago, 1971.

[3] The self is an abstract concept; sometimes called ego. It is the sum of what and who a person feels he is. A large part of the concept of self involves the body and the way one feels about the body, but it also includes such extensions of the self as clothing, automobile, and home. For example, this may be expressed in such ways as: "That's just the sort of house I'd expect him to have."

[4] This explains the sense of feeling "dirtied" often expressed by burglary victims. The intent to degrade is borne out by the fact that many burglars leave behind wanton destruction, and even, sometimes, deposits of feces.

[5] Homicide, of course, is the ultimate violation of self. However, witnesses of the homicide or relatives of the victim are usually in a crisis state. The intervention techniques useful with the victims of crimes against the person are appropriate for use with these individuals.

A CASE HISTORY OF A RAPE SITUATION

Let us examine an example of a more-or-less typical rape case[6] and the way it was handled. Of particular interest are some of the crucial situations, how the police in this case handled them, what they did consistent with our understanding of crisis theory, and how they might have responded differently.

One Saturday afternoon an eleven-year-old girl, living in a large apartment complex in New York City, was accosted by a sixteen-year-old boy as she went into an elevator, was forced at knife point to the top of the building, and raped in the stairwell for half an hour. She was injured rather badly. When he left, she went down to the playground where she had been playing table tennis, picked up her racket, in a stunned manner, commented on the experience to two of her little girl friends, then went to her own building, took the elevator to her family's apartment, and told her mother about it. Her mother called the police. The police arrived quickly, questioned the family and the child with official demeanor, took the facts, and advised the family that detectives would be there shortly to conduct an investigation. They then advised a hospital examination and, indeed, took the child and her mother to the hospital which was not far away.

About two hours later, two detectives arrived, asked essentially the same questions that the original officers had asked, told the parents they would be in touch again, and left.

Then the problems began. The child tried to talk about the event as the evening went on and both mother and father conspired to keep her from talking about it. The mother's guilt was operating; she experienced the event as having somehow been her fault. She had not protected her child, did not go down to the playground with her, did not keep an eye on her, etc. The father was enraged and guilty because he too had somehow failed to protect the child. There was a fifteen-year-old bother in that family who was also thrust into a state of crisis, and was being ignored. Why was he in a state of crisis? It was an event that had involved sex, an issue about which adolescents are particularly concerned. There was not much age difference between the two children: they were of different sexes, and there must have been some feelings. After all, incest taboos operate strongly in all families. And, additionally, the victim had reported that the rapist was about the same age as her brother. Thus the situation must have had serious implications for him.

What we see here is an incident in which the crime of rape has produced a crisis not only for the victim but for the entire family as well.[7] The impact of the crisis, its shattering effects, the regressive tendency of all members of this family cry out for a firm, gentle but knowledgeable authority who, by his actions, can satisfy the need for support and strength. And if this authority is a police officer, he can at this time set the basis for furthering his investigation.

For example, the parents might be approached in the following way: "Look, we're police officers; we've had experience with this sort of thing, and we understand. So let's talk about what our experience tells us is going to happen as a result of what's gone on here. You're going to feel more guilt than you may realize about what's happened to your little girl. You're going to ask yourselves, 'What could I have done to prevent this?' Well, in reality, you didn't do anything wrong, and neither did she, and there probably was nothing you could have done to prevent it. But we realize that knowing this is so doesn't keep you from feeling guilty all the same, and we understand that."

Just such a simple statement gives the message that this person with authority is knowledgeable and understanding and can actually predict and give voice to the gnawing internal experiences of these parents. Somehow this process is not only reassuring but encourages trust and an openness with the officer.

From there the investigators might go on to anticipate their future reactions so that the family and/or the victim can recognize them and deal with them as they occur. At the same time, they may set the basis for furthering the investigation. They might say something like, "We know that this is painful for the family, too. You're probably going to have a tendency not to want to hear about it, to feel that it would be best for eveybody if your child didn't talk about it. But our knowledge in these situations tells us that people have a compulsive need to talk about what has happened to them, to 'get it out of their system,' to share it with someone who understands and who won't judge her or be harsh with her or blame her and says in effect, 'We still love you.'

"Now, I want you to do a job for us. I would like you to listen to what she has to say, and if at any time in the retelling of the story there is a new piece of information you didn't hear before, write it down, and call us immediately."

In other words, these officers would not only be demonstrating to the family that they know what they are doing, but they have also given them a job to do in relation to the event. They have made them partners in apprehending the offender. The family members can feel that they can do some good in the apprehension, and at the same time they are doing the most helpful thing they can for the victim.

From the viewpoint of the investigating officers, this may seem the long way around. It implies that they should not try to get more than the barest facts at first, that the original report by the patrolman first on the scene probably is enough to begin with, and that probing at this point, especially aggressive probing, is more likely to be harmful and impede the flow of information than to be helpful.

So we would suggest that the first interrogation or interview be a very general one, a helpful one, one that demonstrates to the victim and her family that the officer is concerned about them. The emphasis is on the victim and on her family, not on the offender . . . not yet. First the victim must be allowed to "pull herself together," then she will be willing and able to deal with cooperating in the process of apprehending the offender. A realization of this priority establishes a relationship that will serve as a basis for gaining information. The investigators might even set up an appointment and say, "We'll be back next Wednesday, and we'd like to talk to you then and see how things are going. Maybe then you'll feel a little differently, and will want to go into the matter a little more." The situation is defined as one of helpfulness, not force, and the victim will repay with information and cooperation because the officers gave her and her family the support they needed in crisis.

In the long run, then, more information is likely to be gained with a little increase in time spent by the investigators. They have established a relationship of trust with the victim and with her family. Their desire to help reciprocally will also lessen the likelihood, so frustrating to the investigators, that if a suspect is arrested, the victim will refuse to cooperate, or that her family will put pressure on her to forget the whole incident.

FURTHER GUIDELINES FOR INVESTIGATION

We have attempted to present here a broad outline of how the theory of crisis intervention may be related to work with victims of rape. This outline has emerged froma blend of psychological theory and the practical experience of officers with whom it has been discussed. In discussing this outline with police officers who have dealt with rape cases, several more specific questions about the best procedures have arisen. In answer to the most common questions, some general guidelines may be presented that seem appropriate for the majority of cases. It is up to investigators, however, to realize that each situation differs and to use their discretion and intuition in determining when these suggestions are appropriate.

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[6] Contrary to public expectations, the majority of victims of rape are in their teens, and younger victims are common. Parenthetically, young male victims of sodomy are not uncommon either.

[7] This must be so in all cases, even if the victim does not tell her family about the crime, the changes that will almost inevitably be produced in her behavior as a result of the crisis will become obvious to those close to her. They will wonder what is wrong and be upset by these changes for which they can see no reason.

1. It is critical that the investigator scrupulously avoid any suggestion of force. This is especially true if the officer is male (and of course, most officers *are* male). Often, in his zeal to complete an investigation, because he is committed to what he is doing and really involved, the officer may be perceived by the victim as aggressive and forcible. In a sense, he is acting toward her essentially as the rapist had acted. The implication is obvious.

2. It is crucial that an authoritative investigator present himself in a benign, nonjudgmental way. This is especially true for the male officer. He must have patience and attempt to create a climate that will allow the individual to bring to the surface the information willingly and naturally. The extra time that this seems to take in the short run will yield more information in the long run because it tends to short-circuit repression.

3. The officer should encourage the victim to talk about what has happened, even though he may find it painful and threatening to have to listen. He may want to probe gently in a later interview for information that may be particularly shameful to the victim or that she may not know how to express. This is particularly true if some form of sexual abuse or sodomy, has or may have, occurred. The officer may say something like, "Very often women tell us other things happened to them, too, things they consider unnatural or find hard to talk about. Did anything like this happen to you?" The officer must be careful, at the same time, not to suggest things to a victim who may lie or remember incorrectly in an effort to please him. A very gentle approach, perhaps a bit off-handed, not intense probing, may prevent the tendency to induce suggested conformity.

4. The most appropriate place for interrogation differs with the circumstances. No relationship or encounter occurs in a void. It happens in a setting and the setting often determines what happens in it. Generally, the home is the best place for an interrogation, especially if the rape did not occur there and the victim has not expressed a desire that her family not know about the crime. The home is the extension of the self, and if the interview can be done privately, within the home, it often adds to the victim's sense of safety and security. If the officer is in doubt it often is appropriate to ask, "Where would you feel most comfortable talking about this?" The station house usually is the worst place. It is an environment that is conducive neither to the sense of comfort nor of ease.

5. The question of place leads to the problem of the presence of others, and the necessity, often, of dealing with the family as well as with the victim. Most victims are part of a social network, and their reactions to a crisis will necessarily affect the way they relate to others, whether the others are told directly about the crisis or not. A victim may be afraid to tell her husband about the rape, but he cannot help but notice that her behavior has changed, that something is wrong, and this will, in turn, influence his behavior toward her, often in ways that make the crisis worse for her.

6. The victim always should be seen privately. Even the most well-meaning relative or friend will be upset by the situation and will tend to try to cut off the victim's need to ventilate. If the interview is in the home and the family members seem particularly anxious, it is sometimes helpful to interview the other members of the family first. This should be done without the victim in the room and for the purpose of assuring family members that both they and the victim are blameless. It is important that the authority make clear that the victim acted correctly because she is still alive. It is important, too, to reflect for them something of what they are feeling. They then may be enlisted as helpers in the investigative process.

7. If the victim comes to the station alone to report the crime, she may want and need support in dealing with her family. It is appropriate to ask if she would like to be taken home and have the officer help her explain the situation to her family. At any rate, given the nature of the social view of this crime, the meaning the crime has for the victim (i.e. violation of self), and the effect upon the person, it is very important that the privacy of the relationship with that immediate authority be uncomplicated by any other relationship. It should be developed in the context of confidentiality and closeness. If the officer establishes a good relationship with the family so that they understand the crime and its significance to the victim, then they have a way of dealing with the situation. This enables them to relate to the victim with the same sense of compassion and understanding that they have just received.

8. In later interviews, the officer assigned to the case may help the victim by de-mystifying the court procedure to her in a suppportive way. He may also give her the names of organizations that have been formed to help the victims of rape. In New York City, for example, members of women's organizations familiar with the court procedure are available to supportively accompany the victim through the complexities of the legal process.

9. A frequently asked question is whether the officer assigned to the victim of a rape should be male or female. The reality in most police departments in this country is that the bulk of work is done by male officers. Even if one wanted to refer the victim to a female investigator such an officer may not be available. If the victim specifically and spontaneously requests a female officer, every attempt should be made to provide one for her. However, there is some feeling that there are advantages to having a sensitive male officer deal with the case. An understanding, supportive male at this time may help the victim overcome a natural aversive reaction to men. That is, she sees, at a time when such an experience is vital, that not all men are aggressive and harmful. This may ease her job of relating to the other men in her life. In any case, more important than the sex of the investigator is the individual officer's crisis intervention and investigative competence.

SUMMARY

In this brief presentation we have attempted to place the crime of forcible rape in the context of crisis theory. An understanding of human crisis and of crisis intervention techniques by an investigating police officer can immeasurably aid the rape victim in preserving her psychological integrity and also aid the investigating officer in the apprehension of the offender and in the preparation of a case that will stand up in court.

APPENDIX ONE-B

*Interviewing the Rape Victim**

The interview of a rape victim requires exceptionally intimate communication between the police officer and a victim who has been physically and psychologically assaulted. As such, the investigative nature of the interview represents only one dimension of the officer's responsibility. By conducting the interview tactfully and compassionately — and with an understanding of the victim's psychological condition — the officer can avoid intensifying the victim's emotional suffering. At the same time, the cooperation of the victim is gained and the investigative process is thereby made easier.

Law enforcement authorities agree that, for a number of reasons, rape is the most underreported crime in the United States. Because of the highly personal nature of rape, many victims are too embarrassed to report the crime. They would rather forget the incident than discuss it. In some instances, the rapist may be a relative or family friend, and therefore the victim is reluctant to file a complaint. Some victims do not contact the police because they fear that the investigative, medical, and prosecutorial procedures followed in a rape case are as psychologically traumatic as the crime itself.

The legal process that the rape victim encounters is unfamiliar to her and, under the circumstances, emotionally threatening. The police interview, in which the victim necessarily relives the crime by giving a detailed account of the rape and answers intimate questions, is followed by the courtroom trial where she can be subjected to an intimidating cross-examination by the defense lawyer. The legal process may take years to complete, constantly reminding the victim of the experience and making her relive it each time.

As the initial step in the legal process, therefore, the police interview should be more than an investigative inquiry. It should also be used to acquaint the victim with the complicated legal and medical system that she will encounter.

Important to the successful interview is the officer's understanding of the emotional condition of a rape victim. When interviewing a victim, the officer should not regard rape as solely a physical sexual assault. He should consider the psychological effects rape has on its victims. Often the lasting scar of rape is an emotional one, leading to marital problems, mental illness — even suicide.

PSYCHOLOGICAL REACTIONS OF VICTIMS

SELF-CONCEPT: Except for homicide, rape is the most serious violation of a person's body because it deprives the victim of both physical and emotional privacy and autonomy. When rape occurs, the victim's ego or sense of self as well as her body is penetrated and used without consent. She has lost the most basic human need and right: control of physical and emotional self.

Perhaps most damaging to her self-concept is the intrusion of her inner space. Psychologically, it does not matter which orifice has been violated. Symbolically, breachment of any one represents to the victim a forced entry into her ego.[1]

Police officers should be aware that the rape victim has been forced to experience an event that, from her viewpoint, is emotionally asexual. The victim's psychological response to rape primarily reflects her reaction to violation of self. As such, it is extremely important that police officers view rape as an emotional as well as a physical assault.[2] This is true regardless of the moral reputation of the victim. Even prostitutes, who regularly sell their bodies, will experience the psychological violation of self when raped.

RESPONSE TO INTERVIEW: The way in which rape victims respond to the interview situation is varied, depending on their physical condition and individual psychological makeup. The verbal styles of the victims can range from quiet and guarded to talkative. Some victims find it extremely difficult to talk about the rape, perhaps because of the personal nature of the subject or because they are uncommunicative while under pressure. Others find relief in discussing the details of the rape. Often a victim will exhibit both patterns during the course of an interview.

The two verbal patterns frequently displayed by rape victims during an interview are indicative of general emotional states that are commonly associated with the psychological effects of rape. The victim may respond to the crime in an expressed manner; that is, she verbally and physically exhibits fear, anger, and anxiety. Or, the victim may respond in a controlled behavior pattern. In this pattern the victim hides her feelings and outwardly appears to be calm, composed, or subdued.

A number of rape victims will show their feelings through physical manifestations of expressed reaction. Crying, shaking, restlessness, tenseness — all are means of expression that accompany discussion of the crime, especially the more painful details. Some women may react by smiling or laughing. They do so to avoid their true feelings. Comments such as "really, nothing is wrong with me" combined with laughter serve as a substitute for the distressing memory of the attack.

Rape victims who are composed and able to calmly discuss the rape are usually controlling their true feelings. Presenting a strong controlled appearance during a personal crisis may be the way they cope with stress. In some cases, however, the victim's state of calmness may result from physical exhaustion rather than a conscious effort to remain composed. Because many rapes occur at night, victims are frequently exhausted, not having slept since the previous night.

A silent reaction on the part of the victim may also be encountered. The officer needs to realize that silence does not mean that the victim is hiding facts. It does mean that she is having a difficult time in starting to talk about the incident.

Another emotional reaction of rape victims is to express shock that the incident occurred. Statements such as "I can't believe it happened," "It doesn't seem real," or "I just want to forget it" are common psychological responses to the trauma of rape.

Although there is no doubt that general emotional reactions to rape vary among individuals, there does seem to be one

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*This excerpt is reprinted from *Training Key #210* with the permission of the International Association of Chiefs of Police.

[1] Morton Bard and Katherine Ellison, "Crisis Intervention and Investigation of Forcible Rape," Police Chief (IACP; Gaithersburg, Md.) May 1974, p. 71.

[2] *Ibid.*, p. 71.

common psychological denominator: fear. Experienced police officers have often observed that the victim has feared for her life during the rape, that she viewed the rapist as a potential murderer. In most cases, the emotional reaction to this fear does not dissipate by the time of the interview.

Regardless of the victim's emotional reaction and its observable manifestations to the crime, the interview itself creates additional anxiety. In many cases, the victim is totally ignorant of police procedures; perhaps she has never before talked with a police officer. The only certain thing is that she will have to discuss with a "stranger" the details of what is probably the most traumatic experience of her life. This produces a conflict within the victim: She *knows* that to make possible an investigation, the details of the rape must be discussed, but she *feels* apprehensive about describing the experience.

The character of the emotional stress that the victim experiences when she describes the rape is perhaps frequently misunderstood. To recount the details of the rape, the victim must mentally relive the incident. In most cases, the victim's psychological defenses will interfere with her ability and desire to remember what occurred. The victim may not be able to recall certain parts of the attack, or she may consciously change certain facts or omit them. The officer must exercise great patience and understanding in eliciting from the victim the necessary details of an experience she does not want to relive. Officers need to realize that this "reliving" of the experience, if not properly handled, can amount to a psychological rape of the victim.

Another important factor is that the interview should be thoroughly conducted. The officer should gather complete information during the in-depth interview; thus he avoids the need to repeatedly question the victim at later dates. This constant re-interviewing in effect requires the victim to relive the experience again and again. To avoid repeated interviews, the officer must overcome some victims' reluctancy and difficulty to talk by conducting a structured interview.

THE INTERVIEW

The investigative goal of the police officer in interviewing a rape victim is to determine if and how the crime occurred. It is from the statements made by the victim to the officer that the essential elements of the offense and the direction of the investigation are established.

Because the interview process may be considered as a routine operation, the police officer may, if not careful, project the feeling of not being concerned with the victim as a person. The danger is that the victim may be left with the impression that she is being treated as an object of physical evidence rather than as a person. The officer cannot allow this to happen. It is during the personal and sensitive communication of the interview that the victim's cooperation is gained and her emotional well-being is maintained. If the officer treats the victim impersonally, he will not gain her confidence and the interview will be unsuccessful. The officer may also cause the victim further emotional stress.

OFFICER'S ATTITUDE: When interviewing a rape victim, the officer must realize that, from the victim's viewpoint, what has occurred has not only been a violent sexual intercourse but also a perverted invasion of her self. Further, the officer must be constantly aware of his own sexual attitudes and the subtle and not so subtle ways in which they emerge. Special care should be exercised so that the rape victim is not placed in the position of perceiving herself as being guilty because of the personal nature of the crime and the social stigma attached to it. A professional bearing throughout the interview will help the officer obtain an accurate report of the crime without causing the victim to experience unnecessary anxiety.

PHYSICAL COMFORT: It is unreasonable to expect a rape victim to respond to detailed questioning while she is uncomfortable or in physical pain. The victim may have been beaten as well as raped. Frequently, the rape has occurred outdoors, and the victim and her clothing have been soiled. Sometimes the victim has been urinated on or has been forced to commit oral sex. Under conditions such as these, the preliminary interview should be brief, and the in-depth follow-up interview should be conducted after the victim has been medically examined and treated, and her personal needs such as washing and changing clothes have been met.

SETTING: The interview should take place in a comfortable setting where there is privacy and freedom from distraction. Places such as a crowded office where the interview is subject to interruption are inappropriate. A rape victim finds it difficult to discuss the intimate details of the crime with the interviewer; her reluctance to talk will greatly increase if there are other people present. She should be isolated from everyone. This includes friends, children, husband, boyfriends, and other victims.

It is often desirable that a policewoman conduct the interview. In some incidents, particularly with a juvenile, a rape victim can more easily discuss the crime with a woman than with a man. In most jurisdictions, however, use of a female officer is not possible. However, the police should consider the utilization of the presence of a trained female, such as a nurse or social worker, to help to ease the victim's embarrassment and anxiety.

OPENING REMARKS: To most rape victims, the interviewing officer is not just a police officer. The officer is also an official representative of society, probably the first representative met during a legal process that traditionally has placed a moral burden on rape victims. As such, the officer may symbolize to the victim the entire society. His behavior may represent to the victim the general attitude of the community toward her plight. If the officer is callous, accusatory in manner or speech, the victim may leave the interview fully expecting society — and perhaps even her family — to react in the same way. In addition, the victim may begin to, or further, question her own motives and therefore feel unnecessary guilt.

At this critical point, when the officer should presume that his attitudes are being expressed to the victim, he must gain her confidence by letting her know that a major part of his function is to help and protect her. He should make plain his sympathy for and interest in the victim. By doing this, the officer contributes to the immediate and long-term emotional health of the victim. He also lays the foundation of mutual cooperation and respect on which is built the effective interview.

"VENTILATION" PERIOD: Following the opening remarks, the officer should allow the victim to discuss whatever she wants. This "ventilation" period gives the victim an opportunity to relieve emotional tension. During this time, the officer should listen carefully to the victim, but he should be aware that any initial description of the incident may be colored by the trauma of the experience. Everyone's perception of reality is altered by extreme stress.

INVESTIGATIVE QUESTIONING: After the necessary ventilation period, the victim should be allowed to describe what occurred in her own words and without interruption. As the victim tells the story of the rape, she will also tell a great deal about herself. Her mood and general reaction, her choice of words, and her comments on unrelated matters can be useful in evaluating the facts of the case. It is important in such an interview that the police officer be humane, sympathetic, and patient. He should be alert to inconsistencies in the victim's statement. If the victim's story differs from the originally reported facts, the officer should point out the discrepancies and ask her to explain them in greater detail. The officer should phrase his questions in simple language, making sure that he is understood. It is best if the questions are presented in a manner that encourages conversation rather than implies interrogation.

Often the rape victim will omit embarrassing details from her description of the crime. Officers should expect a certain amount of reluctance on the part of the victim to describe unpleasant facts. The officer should explain that certain information must be discussed to satisfy the legal aspects of rape and pursue the investigation. He may add that the same questions will be asked in court if the case results in a trial.

In a majority of cases the attack is premeditated, and about half the time the rapist has known or has seen the victim before the assault. Because of this, certain types of questions should be asked.

The victim should be asked if, and how long, she has been acquainted with the offender. The circumstances of their meeting and the extent of their previous relationship, including any prior sexual relations, should be discussed. Although previous sexual acts with the accused will not absolve the offender at this particular time, knowledge of them helps to establish the validity of the complaint. Along these same lines, the officer should determine if the victim has ever made a charge of this nature in the past; review of previous records, if any, will provide insight to the present complaint.

Where it is determined that the victim had known the rapist prior to the incident, he should be identified and interviewed. If the offender is unknown, the officer must get a detailed description of him including clothing, speech, and mannerisms. The officer should determine whether the offender had accomplices or revealed any personal facts such as area of residence or places he frequented. Questions such as "Was anyone else present when first meeting or being attacked by the rapist?" should be asked. Did the offender use a weapon? What type? What kind of vehicle did he drive? After obtaining all the possible information about the unknown rapist, the officer will begin his search to identify him.

INTERVIEW'S END: As a result of having been raped, some victims suffer long-range emotional problems. At his discretion, the police officer may suggest that the victim seek assistance from an appropriate counseling agency, family physician, psychologist, or clergyman. In addition, the officer may explain to the victim's family the emotional suffering rape victims typically encounter.

SUMMARY

From the information given by the rape victim during the interview is developed the investigative direction of the case. Without these facts, as personal and unpleasant as they always are to recount, police investigation of the crime cannot proceed.

The manner in which the interview is conducted is vital to the emotional health of the victim. The police officer should be aware that the rape victim has been assaulted psychologically as well as physically. In conducting all phases of the interview, he should keep the well-being of the victim uppermost in his mind by acting tactfully and compassionately.

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CHAPTER TWO

THE MEDICAL TREATMENT OF SEXUAL ASSAULT VICTIMS

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THE MEDICAL TREATMENT OF SEXUAL ASSAULT VICTIMS

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THE MEDICAL TREATMENT OF SEXUAL ASSAULT VICTIMS

I. INTRODUCTION

The following guidelines are intended for use by medical personnel and medical facilities throughout the State of Minnesota. The guidelines are intended to be adapted to each community, taking into consideration the particular needs of that community as well as the extent of medical personnel, services and facilities available.

Since the needs of sexual assault victims cannot be met effectively without the combined efforts of law enforcement, medical, social service and prosecutorial personnel, it is necessary to be aware of the responsibilities of one another in dealing with sexual assault victims. Therefore, it is recommended that medical personnel be familiar with the guidelines presented elsewhere in this manual for law enforcement, social service and prosecutorial personnel.

This Chapter, **The Medical Treatment of Sexual Assault Victims**, presents basic principles that should govern the medical treatment and examination of sexual assault victims in order to achieve the following goals:

1) Treatment of injuries
2) Care of the victim's immediate emotional needs
3) Diagnosis and treatment of disease
4) Diagnosis and treatment of pregnancy
5) Prevention of future psychological trauma
6) Proper collection of evidence for possible use in legal proceedings

The chapter includes a discussion of pre-examination considerations such as the victim's immediate needs, use of consent forms, confidentiality, and the release of evidence. It also contains the duties and responsibilities of the various hospital/medical personnel. The specifics of examining and treating the victim of sexual assault are also presented.

II. GENERAL PRINCIPLES

A. *Philosophy*

Every victim of sexual assault has the right to be treated with respect and dignity while receiving proper medical care. The quality of care as well as the legal redress available to the victim will depend, in part, upon the procedures of the medical facility and the attitudes of medical personnel.

B. *Privacy*

A private and comfortable room is desirable as a waiting facility for victims of sexual assault. Interviews and administrative procedures should be completed there.

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C. *Patient Priority*

The victim of sexual assault should be treated as a medical emergency and accorded the *highest possible priority* (next only to life-threatening situations) in the emergency room. The victim should be interviewed promptly to determine the urgency of his/her physical and emotional needs. In addition, evidence must be gathered and laboratory tests initiated as soon as possible after the sexual assault for maximum effect.

D. *Victim Participation in Decision-Making*

Because the victim of sexual assault has just been through an experience during which control over his/her life was temporarily in the hands of someone else, it is critical throughout the medical treatment process to assist the victim in regaining a sense of control by involving him/her in decision-making with regard to treatment and examination. The victim should be presented with all the options possible in order to make a meaningful choice regarding treatment.

E. *Reporting*

The hospital should not condition its willingness to provide medical treatment on the victim's intention to report the crime to the police. If the victim has not made a decision regarding reporting, the advantages and disadvantages of reporting and of participating in prosecution of the offender should be discussed with the victim. The victim should be informed that reporting the crime does not obligate him/her to participate in prosecution. However, the ultimate choice of whether or not to report must remain with the victim.

If the victim is unsure about reporting, he/she should be encouraged to have a complete evidentiary examination since evidence may be lost permanently if tests are delayed. However, the victim should be made aware of the county's policy concerning payment of the evidentiary examination in regard to reporting (see the following section, Cost of Treatment).

If the victim has decided not to report to the police he/she should be examined for physical injury, possible pregnancy and possible venereal disease. The victim should also be advised of the availability of anonymous (third party) reporting procedures, if they exist in the community.

F. *Cost of Treatment**

Minnesota Statute 609.35 provides that the cost of an examination for the purpose of gathering evidence must be paid by the county in which the offense occurred. Some counties require the victim to report the sexual assault to the police before they will assume the expense of the examination. The victim should be informed of this. If the decision is made not to report to the police, alternative billing arrangements should be made with the victim. He/she should be provided with information about whom to contact with any questions about costs or billing.

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*See also Chapter Four, Appendix B. The Minnesota Crime Victims Reparations Law.

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III. PRE-EXAMINATION CONSIDERATIONS

A. *The Victim*

Sexual assault is a traumatic, life-threatening experience which usually leaves the victim feeling humiliated, degraded, distrustful, afraid and angry. Every victim responds to the experience in a different way. Some victims may appear relatively calm while others may be crying hysterically. (A thorough description of the victim's feelings and responses to sexual assault is presented in Chapter Three, Counseling the Victim of Sexual Assault.)

Emotional support and understanding of the victim, as well as of significant others is a prerequisite to good medical care.

1. *Meeting the Immediate Needs of the Victim.* When the victim arrives at the medical facility, he/she should be met in a specified area by a support person, whether that be a social worker, an emergency room nurse, a community health worker, a trained paraprofessional or a volunteer.

   The victim's first need, beyond the care of any emergency physical injury, is to feel safe and to be made comfortable. Arranging for the physical comfort of the victim may be as simple as providing a glass of water, tissues or a place to wash and change clothes after the physical examination. The victim also needs to be informed about the procedures to take place during the examination and to be involved in decisions regarding consent forms, etc. However, information regarding cost of treatment should be discussed with the victim after the examination is completed. The victim may also need assistance with informing family or friends and obtaining clothing and transportation home.

   One of the victim's greatest needs is for emotional support. He/she needs to be treated as a total person with self respect, to feel in control, not alone, and to have an empathic, understanding listener who will help him/her express feelings about the sexual assault.

2. *Preparing the Victim for Examination.* An important part of preparing the victim for the physical examination is to find out if he/she has ever been examined. For some victims this may be the first pelvic or rectal examination. The victim needs to know what is expected of him/her and what the physician will be doing and why. Often the physician will explain this, but reinforcement by the nurse or support person will help the victim feel involved instead of feeling like an object of things being done to him/her. Since the victim has just been through an experience which he/she did not consent to, it is essential to avoid any hint of force but rather to encourage the victim's cooperation in the various aspects of the medical treatment.

B. *Consent Forms, Release of Evidence and Confidentiality*

The importance and effect of the consent forms should be explained to the victim prior to any examination or treatment. This will enable the victim to make an informed choice about treatment as well as making a police report.

1. *Consent for Examination and Treatment.* Consent for examination and treatment should be obtained from the victim prior to examination and treatment. Such consent should be separate from the authorization for release of information. It

should cover the examination and the collection of specimens needed for hospital as well as evidentiary purposes.

2. *Authorization for Release of Information and Evidence.* All information and evidence should be retained by the medical facility and should be released *only* upon specific written consent of the victim. Information and evidence includes medical record services, slides, x-rays, clothing, photographs, etc., relative to this incident.

   The victim's authorization for the release of information and evidence to the police should be separate from the victim's consent for examination. (A sample Authorization for Release of Information form is provided in Appendix A of this chapter.)

3. *Confidentiality.* The medical facility should be aware of its possible liability for disclosure of confidential information about the victim to someone outside the hospital — even the police. Specific regulations are in a state of flux but the trend in federal legislation and case law is moving toward more restrictions. At the present time in Minnesota, county and city hospitals are governed by the provision of the Minnesota Data Disclosure Act which requires hospitals to inform the subject exactly what is going to be done with the information gathered (Minnesota Statutes 1974, Sections 15.162-15.169).

IV. DUTIES AND RESPONSIBILITIES OF MEDICAL PERSONNEL

A. *The Medical Team*

A team approach to providing for the needs of the sexual assault victim by medical personnel is ideal. This approach insures continuity of care but should involve as few staff members as possible. The formation of the team as well as the specific responsibilities of each member will vary with the size of the particular medical facility, the availability of staff, and many other factors. The following discussion of responsibilities is outlined for a team consisting of 1) a victim support person (hospital social worker, nurse, or volunteer), 2) an emergency room nurse, and 3) a physician.

A major responsibility of every member of the medical team is to be aware of his/her own feelings and attitudes about sexual assault. Recognizing that the victim has first been through a life-threatening and humiliating experience, the medical team should provide for the emotional as well as physical well-being of the victim by allowing the victim to talk freely about his/her feelings. Listening to the victim in a non-judgmental supportive way and allowing the victim to regain a sense of control over his/her situation can be essential to the victim's emotional recovery from the assault.

1. *The Victim Support Person.* The victim support person may be a hospital social worker, a nurse, a sexual assault counselor or a volunteer. He/she should be knowledgeable of, and ideally be able to continue to support the victim through the medical, law enforcement and, possibly, court procedures. The victim support person may be the key person to provide the continuity of care which can be instrumental for the victim's healthy adjustment after the sexual assault.

   There are many functions the support person should be able to perform, including

- Making initial contact with the victim in a specified area of the hospital.
- Notifying the appropriate physician or confirming that notification has taken place.
- Asking if the victim wants family or friends to be informed and, if so, contacting them.
- Carefully explaining all procedures about to take place, including the purpose of the medical examination and the specific tests needed for gathering medical-legal evidence, the role of the police, the purpose of photographs, the purpose of consent forms, and the availability of follow-up facilities, including sexual assault crisis centers and medical and emotional treatment facilities. It is important that the victim be given an opportunity to make an informed choice regarding all options.
- Explaining the purpose of consent forms and obtaining the necessary written consents.
- Assessing the victim's behavior and functioning. The social worker, nurse, or counselor who performs this function must have adequate training in the psychosocial problems that sexual assault victims and their families experience. After making the initial assessment the support person should be prepared to refer the victim to other agencies or other team members for counseling, if the victim so chooses.
- Asking the victim whether he/she needs clothing or transportation and making these arrangements for him/her.
- Providing other services, including information about making a report to the police or third-party reporting services.
- Maintaining a follow-up contact with the victim for on-going support, referral, etc.

2. *The Emergency Room Nurse.* In order to facilitate the care of the victim and to provide empathic ongoing support, it seems appropriate to designate a registered nurse as the primary care emergency department staff member. The specific responsibilities of the emergency room nurse will depend upon his/her role on the medical team. In many cases, the nurse will also be designated the victim support person, providing many of the supportive services described above.

   Additional responsibilities of the nurse should include:

   - Providing an examining area where the victim can be registered in private.
   - Further clarifying all procedures about to take place, presenting the victim with all of the options and involving him/her in the decision-making in regard to treatment and examination.
   - Participating in whatever history-taking is designated as his/her responsibility.
   - Assisting in whatever external examination is designated as his/her responsibility.
   - Maintaining the chain of custody of evidence for specimens he/she is designated to collect.
   - Remaining with the victim as much of the time as possible, explaining the reason for his/her absence if the victim has to be left alone.
   - Arranging for a medical appointment for follow-up venereal disease detection. Whenever possible, the victim should be phoned prior to the follow-up and

reminded to attend. If this appointment is missed, it is essential to contact the victim to arrange another appointment.

3. *The Physician.* The physician performing an examination in a sexual assault case has a dual role. In addition to being sensitive to and providing for the emotional and physical needs of the victim, the physician is the key person on the medical team responsible for gathering all of the available medical evidence and providing a permanent record of all aspects of the examination in the event of future prosecution. Such an examination can provide extremely important legal evidence in a criminal prosecution and must be carefully recorded in detail.

   The physician performing the examination should be licensed to practice in the State of Minnesota or must be at least a resident who is eligible for licensing. A first year resident is *not* qualified for licensing and, therefore, is *not* a medical expert qualified to give expert medical opinions or conclusions in court.

   The specific responsibilities of the examining physician should include:

   - Clarifying to the victim the procedures that will be followed, presenting the victim with all of the options and involving him/her in the decision-making with regard to treatment and examination.
   - Obtaining a medical history. If this is the emergency room nurse's designated responsibility the physician should review the nurse's record, discuss it with the victim and, if necessary, elaborate on it in writing on the record.
   - Conducting a general physical examination.
   - Performing a pelvic examination. The physician should forewarn the victim if the procedure is apt to produce discomfort, pain, or a "tension response" and should assist the victim in relaxing as much as possible throughout the examination. This is particularly critical if this is the victim's first pelvic examination.
   - Collecting specimens for laboratory examination.
   - Completing the medical report.

   Physicians in private practice may frequently choose to refer a sexual assault victim to a hospital emergency department which has established procedures for an evidence gathering examination. However, the necessity for prompt examination or the victim's emotional response may sometimes preclude such a referral. In such cases the private physician should be aware of the importance of providing for the emotional as well as physical needs of the victim, collecting the evidence, protecting the chain of custody of evidence, and possibly testifying at trial.

B. *Guide to Medical Testimony in a Criminal Prosecution*

Although the following section is addressed to the examining physician, other medical personnel, such as the nurse, social worker, or laboratory personnel, should also be aware of these guidelines. In many instances, they will be the key medical witnesses testifying and will be recognized as experts in their field.

1. *The examining physician* is usually subpoenaed in only a small fraction of the total cases in which he/she performs evidentiary examinations that could lead to criminal

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prosecution. If the subpoena is for a District Court case, the attorney ordering the subpoena will probably inform the physician that testimony will not be needed on the date and time specified on the subpoena. A subpoena continues in effect until the matter in litigation is completed. However, if a District Court subpoena comes from the prosecutor, it must request the physician's presence on the date and time that the trial is scheduled to begin. Most felony trials begin with a constitutional hearing, followed by selection of a jury prior to any testimony being taken. These proceedings may take several days. In any case, it should be possible to schedule the physician's appearance to some extent, such as morning or afternoon or an alternative of two possible days to testify. All of this must be arranged with the attorney who is handling the case.

2. *Preparing to Testify.* The examining physician should obtain the name of the victim/patient and hospital number from the attorney who is responsible for the subpoena (the attorney's name will usually appear on the subpoena itself). He/she should then review the medical records trying to recall the details of the case and his/her findings. As the medical expert the physician will have to explain the medical findings, opinions, and conclusions in terms that the jury, judge and lawyers can understand. Once the physician has reviewed the medical records and findings of the case, he/she should meet with the prosecuting attorney prior to trial to discuss the case and the medical testimony to be given.

3. *Testifying.* Any medical witness will necessarily be questioned concerning his/her qualifications as an expert medical witness — educational background, membership in any professional society, publications, number of sexual assault victims treated, etc. A resume should be prepared in advance of testifying.

   The medical witness will be allowed to refer to his/her medical report while testifying if it will refresh his/her memory. He/she should be prepared to relate the following in detail:

   a. Initial contact with the victim/patient including the history and observations of the patient's physical, emotional and mental condition.

   b. All details of the physical examination, including vital signs, the external examination, internal pelvic and laboratory specimens collected and what was done with each of the specimens, together with anything else that may have been done such as ordering x-rays, etc.

   c. Explanation of all technical terms as well as interpretation of all tests performed and the laboratory results of those tests. If the physician is unsure of his/her ability to interpret the tests, he/she should speak with a hospital pathologist and become familiar with the interpretation of the tests.

   d. Each question should be answered fully and truthfully. In general:

      1) If you don't know the answer to a question, say so.
      2) If you don't understand a question, ask to have it repeated or rephrased.
      3) Respond only to the question asked and do not elaborate beyond the question asked.

4) If you are asked a question demanding a "yes" or "no" answer, which cannot be answered merely "yes" or "no", but instead demands an explanation, say so.
5) Do not go out on a limb, claiming certainty of an answer when you are, in fact, uncertain, because a skillful cross-examiner will then be able to destroy the effect of all your testimony.
6) The opposing counsel may ask: "Do you recognize (a certain publication) as an authority in this field?" If you are familiar with the work, say so, but never advocate any given work as the definitive source for the field.
7) Remember that you will be cross-examined fully by the opposing counsel. The value of your testimony depends entirely upon your ability to clearly state your medical findings in such a way that they are virtually unimpeachable.

V. EXAMINATION AND TREATMENT OF THE VICTIM

In general, family members should not be present during the examination. The victim may not be free with the physician about medical history and the assault itself with the family members present, because such a history may include matters that the victim does not want the family to know. In addition, family members will often be very upset and may vent their anger against the victim rather than providing the support he/she needs.

A. *Obtaining the History*

A complete history should be obtained by the examining physician or nurse (each medical team should designate whose responsibility this is). As the victim goes through the medical treatment process, it is important that personnel who come into contact with him/her recognize the need to keep questions direct and to the point. The victim should not be asked repeatedly to describe what happened and forced to relive the experience again and again. The hospital must decide at the outset what information it needs to obtain and who is to obtain it. The person obtaining the medical history should be concerned only with the history that is related to the victim's condition and the treatment thereof. The basic details of the incident should be elicited from the victim but unnecessary elaboration of the assault should be omitted from the written record. It is usually best to let law enforcement personnel take the detailed report.

The history should include:

1) Pertinent aspects of the incident:
   a) Date, time, place
   b) Body orifices involved
   c) Ejaculation (yes/no; where on the body)
   d) Contraceptive devices used
2) Parity
3) Menstrual history:
   a) Last menstrual period
   b) Any abnormalities
   c) Usual length
4) Date of last Pap smear

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5) Time of last intercourse if within 24-36 hours prior to the sexual assault
6) Current meds, contraceptives, etc.
7) Identification of physical injuries (significant injuries should be photographed)

B. *The Evidentiary Examination*

Obtaining materials of an evidentiary nature should be the combined responsibility of the examining physician and the examining nurse, although the specific evidence that each one is responsible for collecting should be clearly designated in advance. Each item of evidence should be labeled. Each label should have the patient's name, hospital identification number, date and time of collection, collector's name and anatomic source of the specimen.

1. *The Victim's Clothing*

a. The victim's clothing should be removed and observed for the presence of stains, tears, missing buttons, dirt, grass stains, semen, etc.

b. The clothing should be properly labeled and secured for the police. If the clothing is wet, air dry before placing in brown paper bags. Do not use plastic bags since this promotes bacterial growth and putrification.

c. The name and signature of the authorized person (police officer) receiving clothing should be obtained and included in the chart.

d. The victim should be provided with a change of clothes before leaving the medical facility.

2. *The Physical Examination*

a. *Assessment of Injuries* — The assessment of injuries should include the following recorded observations:

   1) The general physical appearance and demeanor of the victim.
   2) The vital signs, i.e. pulse, blood pressure, temperature, and respiration rate.
   3) The presence or absence of marks of violence on the body, their character and position. The skin should be examined for bruises, scratches, lacerations, rope imprints, tooth imprints, pressure imprints, and points of tenderness. Photographs should be taken and/or anatomical drawings made of any affected area.

b. *Treatment of Injuries*

   1) Most minor trauma is relieved by cold compresses, and mild analgesia.
   2) If skin is broken, insure tetanus immunization.
   3) Serious hemorrhage necessitates control and resuscitation of any volume of blood deficit. An experienced gynecological surgeon should be summoned if extensive vaginal laceration is suspected.

c. *Pelvic and Rectal Examination* — A speculum examination should be completed with a description of vaginal mucosa and vaginal secretions, as well as any

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evidence of trauma. An examination and description should also be completed of the cervix, uterus, adnexa, and rectal region for other abnormalities. The pelvic and rectal examination will also include obtaining samples for evidentiary purposes (see the following section, Laboratory Tests).

3. *Laboratory Tests.* The collection and handling of specimens obtained in the examination of the sexual assault victim depends on what laboratory testing is to be done, and whether the testing will be done in part by the hospital laboratory, or whether all testing will be done by the Crime Laboratory at the Minnesota Bureau of Criminal Apprehension.* The following protocol lists the evidence which should always be obtained for the Crime Laboratory as well as other suggested items that the hospital laboratory can use in additional examinations.

   a. *Samples for Laboratory Testing.*

      1) BLOOD — (two tubes; one for crime laboratory and one for hospital). Draw a tube of venous blood for crime laboratory using an anti-coagulated tube (grey top). The blood sample is used to determine the victim's blood type and enzyme characteristics for comparison with those of the assailant. If it is determined that a serologic test should be performed a second blood sample is drawn in a serum tube (red top) for the hospital VD testing.

      2) SALIVA — (one sample for crime laboratory). Sample of saliva on a clean gauze square is used to determine the victim's secretor status, i.e. whether or not the victim secretes his/her blood group substances in body secretions. It is imperative that no one but the victim touch the gauze, since perspiration from another "secretor" could contaminate the sample. Have the patient place a sterile 1x1 gauze square in his/her mouth and saturate it with saliva. Have the patient place the gauze on a glass slide and allow the sample to air dry. When the gauze is dry, put the glass slide and the gauze in a small manila envelope, identify, seal (DO NOT LICK THE ENVELOPE FLAP SINCE THIS COULD ALSO BE A SOURCE OF CONTAMINATION), initial or sign across the envelope flap. *Reminder:* No one but the victim should handle the gauze.

      3) VAGINAL SWABS — (crime laboratory sample). Swabbings of the vaginal vault (or other body areas where ejaculation may have taken place) are used to detect sperm, and to collect material for enzyme evaluation. The enzyme characteristics of the sample taken could potentially be compared with those of various suspects, or the defendant.

         Swab the vaginal vault with a dry cotton-tipped applicator stick. This swab should be used to make a smear on a clean glass microscope slide. Allow the slide and swab to air dry. Place the slide in a slide mailer, and place the swab in an envelope. Identify the source, seal, and initial the containers. Swabs should also be taken and slides made of other suspected areas such as the oral cavity, the anus/rectum, and suspicious skin areas. (Do not chemically

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fix the slide or use saline to moisten the applicators prior to use. This is in distinct contrast to the procedure recommended for hospital examination).

4) VAGINAL SWABS — (hospital sample). Several vaginal swabs are to be collected and these can be used for several laboratory examinations.

a. *Wet Preparation.* Use a sterile cotton tipped applicator and swab the vaginal vault. The cotton should be thoroughly saturated with vaginal fluid and should be agitated in 3 cc's of sterile saline. The saline should contain no preservatives (blood bank saline is recommended). The swab is twirled within the saline and wrung out on the edge of the test tube. The swab should be discarded since the cotton fibers tend to cause sperm deterioration. The sample should be stoppered and submitted to the laboratory. A drop or two of the suspension should be examined without staining under the microscope for the presence of sperm. If sperm are noted, the specimen should be warmed to 37 degrees centigrade for ten minutes in the blood bank incubator and the specimen should be re-examined to evaluate sperm motility. The specimen may be gently centrifuged to concentrate debris for examination. The remainder of the fluid can be utilized for the acid phosphotase determination (see below).

b. *Swab for Stained Smear.* A second cotton tipped applicator is introduced into the vaginal vault. The swab should be saturated and material should be rolled and streaked onto a clean glass microscope slide. The specimen should be immediately fixed with pap stain fixative (either fluid or spray fixative is satisfactory). The slide may be submitted to the hospital laboratory for staining and examination for sperm. This slide does *NOT* substitute for a valid cytologic examination.

c. *Smear in Culture for Gonorrhea (optional).* Swabs for bacteriologic purposes can be obtained if the decision is made to culture for gonorrhea at the time of the initial examination. Swabs should be taken from the cervical canal and the vaginal vault. It is suggested that an additional swab from the anus be taken for the greatest diagnostic accuracy. The swabbing should be processed according to the testing procedures of the hospital laboratory, preferably on Thayer-Martin medium.

A cervical smear for intra celular diplococci may be made but culture is a preferable diagnostic test.

d. *Acid Phosphotase Examination.* The supernatent fluid from the wet preparation above (4a) can be utilized for the acid phosphotase determination. The methodology employed by the hospital laboratory should detect *prostatic* acid phosphotase.

5) VAGINAL ASPIRATE — (crime laboratory sample). Material aspirated from the vagina is used to search for the presence of seminal fluid and to check for the presence of blood group substances for possible comparison

with the blood group of the assailant. *After all of the swabs have been collected* a saline washing (3 mm) of the vaginal cavity should be collected and sealed in a marked leakproof container. Three ml of saline should be placed in the container. Identifying data, of course, should be included on the container.

6) PREGNANCY TEST — (hospital sample). In most facilities a urine test for pregnancy is readily available. This can be performed if indicated.

7) PUBIC HAIR COMBINGS — (crime laboratory sample). By combing pubic hair of the victim, it is possible to find "foreign" pubic hairs, and it may later be possible to compare these with the pubic hair of the assailant. Comb the pubic area with a clean plastic comb collecting any hairs which are removed by the comb. Place the comb and hairs in an envelope, label the specimen as "pubic combings", seal, identify and initial the sample.

8) PULLED HEAD AND PUBIC HAIRS — (*Need Not Be Taken At Time of Initial Examination!*). Since pubic hair evaluations will be performed only if an assailant is apprehended it is suggested that pubic and head hair samples be collected at a later time. If hairs are requested for comparison purposes by the Crime Laboratory, then a minimum of ten (10) pubic hairs and thirty (30) head hairs should be pulled at random over the pubic area and head. The pubic and head hairs should be sealed in separate marked envelopes.

9) FIBERS OR FOREIGN MATERIAL — (crime laboratory sample). Sometimes seemingly insignificant trace evidence can have a major evidentiary impact. Collect all material on the patient's body which may have originated from someone or something other than the patient; for example, leaves, fibers, hairs or material beneath the fingernails.

10) CLOTHING — (crime laboratory sample). The victim's garments may contain important blood or body fluid stains, and may provide important trace evidence. Collect undergarments of the victim and other clothing which could contain evidence from the assailant. Place each article of the clothing in a separate, clean *paper* bag, seal, identify, and initial.

b. *Evidence Check-Off List.* Below is a suggested check-off list that can be used by hospitals. The hospital laboratory director should be consulted for laboratory input on collecting evidence for each hospital or medical facility. NOTE: All boxed items are for the crime laboratory (BCA) and should *always* be taken. The other items listed are for the hospital laboratory and should be taken only if they are going to be processed at the hospital.

Evidence Check-Off List

1) Blood samples ____

a) One tube with anti-coagulant (blood grouping) ____

b) One serum tube (VD test) ____

2) Saliva — dried sample on gauze ____

3) Swabs ____

a) One vaginal swab and smeared slide ____

b) Swabbings from other body areas (if semen suspected) ____

c) One vaginal swab — wet preparation ____

d) One vaginal swab — stained smear ____

e) One vaginal swab — culture for gonorrhea ____

4) Vaginal Aspirate [Note: Take after all above swabbings are complete] ____

5) Urine sample (Pregnancy test) ____

6) Pubic Hair Combings ____

7) Foreign Fibers or Other Material ____

8) Clothing of Victim ____

4. *Instruments and Equipment.* The following instruments and equipment should be available to medical personnel involved in a sexual assault examination:

- Camera
- Bags for clothing
- Envelopes and/or other containers for fingernail scrapings, hair samples, etc.
- Comb
- Woods lamp (ultra-violet lamp)
- Vaginal speculum
- Cotton swabs
- Slides
- Pap fixative
- Diamond pencil
- Ring forceps (2)
- 1 x 1 gauze (sterile) plus containers
- Thayer-Martin plates (3)
- Tubes with 3 cc sterile saline
- Serum tubes (red top)
- Oxalate tubes (grey top)
- Urine container

5. *Protection of Chain of Custody of Evidence.* Once evidence has been collected, it is essential that the "chain of custody" be maintained at all times. The court usually requires that the whereabouts of any evidence to be introduced be accounted for from the time of its collection until the time when the laboratory results are generated. A simple method is to utilize the "locked box" technique. A small box

with a padlock (a tackle box or metal tool box equipped with a small padlock is inexpensive and works admirably). It is recommended that as few persons as possible handle the evidence. The materials can be placed in the locked box in the Emergency Room. The box can be transported to the laboratory by the medical technologist or other laboratory representative. The cultures should be placed in a microbiological incubator immediately after reaching the laboratory. All materials to be tested can be retained within the box until testing is complete. If no box is available, the evidence can be placed in a large paper envelope. The flap should be sealed and identifying data and physician's signature can be written across the flap seal to preserve the chain of evidence. It is essentially impossible to tamper with the contents of the envelope without disturbing the signature as written.

6. *Completion of Medical Records.*

   a. The names of all physicians, nurses, laboratory personnel and police officers who handle any item of evidence or who participate in the examination should be written or printed legibly. It should be kept in mind that the report may be read by a number of other people.

   b. Judgmental statements should not be made, e.g. "The patient appears *unusually* calm". All references to the assault should be brief and factual. Qualifying language such as "alleged" should be avoided. A good format is: "The patient says that . . .".

   c. All specimens should be carefully and accurately labeled and identified with:
      1) Patient's name
      2) Patient's hospital number
      3) Date specimen collected
      4) Person collecting sample
      5) Person receiving sample
      6) A record of the chain of evidence should be kept indicating who collects and receives all items of evidence from start to finish.

C. *Prevention of Disease*

Fear of exposure to venereal disease is a major concern of many sexual assault victims. Tests for the presence of syphilis and gonorrhea should be conducted at the time of the evidentiary examination as well as at follow-up periods. Controversy exists over the routine use of antibiotics for VD prevention without a definitive culture and the final recommendation should be made by the physician. The following procedure is recommended:

1. *Informing the Victim.*

   a. The victim should be informed of the possibility of transmitting VD to sexual partners. He/she should be reminded that VD is transmitted through all mucous membranes (e.g., oral-genital). Sex is not safe until it is determined whether or not the victim has contracted VD and, if so, has finished treatment.

   b. Symptoms of syphilis, gonorrhea and other kinds of venereal disease, including crabs, trichomonas and herpes, should be discussed and a written handout describing these symptoms should be given to the victim.

c. The need for returning for follow-up tests to determine the presence of VD should be strongly emphasized.

2. *Follow-Up Tests.* The victim should be strongly encouraged to return for a GC culture in 3-8 days and for a test for syphilis in 6-8 weeks. An information sheet should be given to the victim indicating the times for check-ups as well as alternative facilities where VD examinations can be obtained without a charge.

3. *Medical Treatment for Venereal Disease.*

   a. A full medical history including allergies and other medications being used should be obtained from the victim.

   b. If immediate treatment is warranted and consented to by the victim, the appropriate dosage of medication should be administered.

   c. If prophylactic injections are utilized the victim should be kept under observation for 30-60 minutes.

D. *Pregnancy*

The possibility of pregnancy as a result of the sexual assault should be considered a primary medical concern unless the victim has been taking an oral contraceptive regularly, has an intrauterine device, has had a tubal ligation or hysterectomy, was in her menses at the time of the assault, or is not in her reproductive years. Presence or absence of sperm on the wet preparation may be helpful in evaluating the risk of pregnancy if the samples have been taken shortly (less than eight hours) after the assault. Unfortunately, a decision about continuing or terminating a pregnancy may have to be made by the victim when she is still likely to be suffering from the shock and confusion of the sexual assault. Alternatives should be presented clearly, objectively and in a non-threatening manner. Psychological needs and reactions of the victim should be taken into consideration. Ultimately, the decision must be that of the victim. If the victim chooses to continue a pregnancy to term, an appropriate referral should be made. If the victim has made a choice to prevent the pregnancy these alternatives are possible:

1) A menstrual extraction may be performed.
2) Some form of postcoital medication may be administered.
3) Insertion of an IUD.
4) The victim can wait and see if she is, in fact, pregnant and have an abortion, if desired.

The following considerations should be kept in mind regarding these three options:

1) *Menstrual Extraction.* This is a procedure in which the endometrial lining of the uterus is removed by insertion of a flexible plastic cannula through the cervical

canal into the uterus. Suction is applied through the cannula as it is moved about within the uterus to remove the endometrial lining. The victim must appear negative on a pregnancy test before a menstrual extraction can be safely performed.

This alternative should be explained to the victim. If the medical facility does not customarily perform menstrual extractions, the victim should be informed of where this service can be obtained.

2) *Diethylstilbestrol (DES, the morning-after pill)*. DES is a synthetic hormone that can be given up to 72 hours after intercourse to prevent pregnancy. However, because of the possibility of harmful short-term as well as long-term side effects, the use of DES should be restricted to emergency situations and then only after taking the following precautions:

   a) The victim is not currently using oral contraceptives or an intrauterine contraceptive device (IUD).
   b) The victim is not currently pregnant (this should be ruled out by examination and pregnancy test).
   c) The victim has no history of cancer, diabetes, some forms of heart disease (see other contraindications on DES literature).
   d) Administration is begun within 72 hours of the victim's unprotected exposure to pregnancy.
   e) The facility can provide a six week follow-up examination or make an appropriate referral and is relatively *sure* the patient will return for follow-up.
   f) The facility has the ability to terminate a pregnancy if DES is given and fails, or has the ability to make an appropriate referral.
   g) The victim has been informed in detail, verbally and in writing, of all the side effects (short and long-term), contraindications and precautions of using this drug.
   h) If DES is prescribed, the full course of the drug *must* be taken for effectiveness. Also, an anti-nausea medication may be considered.

3) *Insertion of an IUD*. An intrauterine device may be inserted and later removed during the victim's next menstrual period.

4) *Suction Abortion or D&C*. Abortion is an option to the victim who chooses to wait until pregnancy is determined. If the hospital or physician has a policy against providing abortions, the victim should be provided with information explaining the policy and stating where such services can be obtained.

E. *Follow-Up*

Follow-up treatment for both medical and counseling purposes is an important part of assisting sexual assault victims. However, some victims may be reluctant to participate in follow-up treatment because it may be a constant reminder of the traumatic experience they have undergone. A suggested procedure, therefore, is to coordinate the follow-up with the victim's initial treatment and, if possible and desired by the

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victim, to make such treatment part of a continuous medical effort. The victim may be more likely to participate in follow-up treatment which involves familiar faces. However, a number of follow-up choices should be available to the victim, including referrals to private physicians, free clinics, VD clinics, and support services.

1. *Medical Follow-Up.*

   a. The initial support person at the hospital should be responsible for making the follow-up appointment at the time of the initial examination. Whenever possible the victim should be contacted to insure that he/she does, in fact, follow-up either at the hospital, or at another referral facility or with a private physician.

   b. The victim should be given the name and phone number of the medical person to contact for any problem which would merit prompt attention, e.g. signs of infection such as fever, pain, sores, discharge, etc.

   c. The schedule for follow-up treatment should be discussed in detail with the victim. The following schedule includes some of the options:

      1) Gonorrhea test — three to five days after the initial examination
      2) Syphilis test — six to eight weeks after the initial examination
      3) Pregnancy tests/prevention:
         a) within 48-72 hours, if DES treatment is chosen
         b) two weeks after missed period if no prior treatment is chosen

2. *Counseling Follow-Up.* Emotional support and/or counseling should be available to victims at every phase of their contact with the hospital. If crisis intervention is available at the hospital during the initial examination, a determination of the need for additional counseling can better be made both by the support person and the victim.

   Facilities that do not have a counseling staff or support person available should refer victims needing such services to outside agencies properly staffed with counselors. Again, care should be taken to coordinate this follow-up counseling with the initial treatment.

   Victims must have a choice of whether or not to obtain counseling. They should be given the name and phone number of agencies that offer services for sexual assault victims.

APPENDIX

CHAPTER TWO

APPENDIX TWO-A

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION FOR VICTIMS OF SEXUAL ASSAULT

I, ______________________________, hereby authorize ________________________
(Name of Hospital)
to release all of the evidence found and all of the information contained in the medical records concerning this sexual assault examination and treatment to the law enforcement agencies that may be involved in investigating this assault or in prosecuting the assailant.

I hereby waive all medical privilege in connection with such examination, treatment and evidence found, and I expressly authorize the use of such medical information in any subsequent criminal prosecution in the State or Federal courts against the assailant.

Care was received on or about ____

Emergency Department __________________ In-Patient ______________________

Under the name of ____

I UNDERSTAND THAT THIS WAIVER AND RELEASE AUTHORIZES RELEASING THE RECORDS OF THE SEXUAL ASSAULT EXAMINATION TO THE APPROPRIATE LAW ENFORCEMENT AGENCIES, BUT THAT NOTHING CONTAINED IN THIS WAIVER AND RELEASE OBLIGATES ME TO PROSECUTE THE ASSAILANT.

SIGNATURE OF WITNESS:	SIGNATURE OF AUTHORIZING PERSON(S):
________________________	______________________________
DATE: __________________	______________________________
TIME: __________________	______________________________ *Relationship to Patient*

APPENDIX TWO-B

HENNEPIN COUNTY MEDICAL CENTER
EMERGENCY DEPARTMENT
NURSING SEXUAL ASSAULT REPORT

Pt. No.
Address
Phone No.
Birthdate

OB-GYN HISTORY

Parity:	Last Pap Smear: Month Day Year
L.M.P.: Month Day Year	Ave. Length Menstruation: Days

Abnormalities of Menstruation:

Last Intercourse: Month Day Year

Current medications: (List)
A. Contraceptives:
B. Other:

Date:
Date of Incident:
Time of Incident: a.m. p.m.

Examination (Circle if taken):

Examining Physician:

	HCMC LAB TESTS				CRIME LAB TESTS		
1.	Seminal Fluid on Body:	Yes	No	5.	Fingernail Scraping:	Yes	No
	A. Where:			6.	Pubic hair combing:	Yes	No
	B. Swab for sperm mobility & P-tase:	Yes	No	7.	Saliva Sample:	Yes	No
	C. Swab for sperm stain:	Yes	No	8.	Blood Type:	Yes	No
2.	VDRL	Yes	No	9.	Sperm Typing Test:	Yes	No
3.	Pregnancy Test:	Yes	No	10.	Blood Alcohol/Drugs:	Yes	No
4.	GC if Indicated:	Yes	No	11.	Urine for Drug I.D.:	Yes	No
12.	Photographs taken:	Yes	No	A.	How many?		
	B. What of?						

13. Blood Pressure: / T.P.R.
14. Description of Physical Injuries (Subjective & Objective):
15. Orifices Involved:
16. Ejaculation: Yes / No Where:
17. Contraceptive Devices Used by Assailant:
18. Since Assault (Circle): Bathing, Clothing Change, Douching, Other.
    Describe:
19. Stains on Clothing: Yes / No Describe:
20. Emotional State (Subjective & Objective):
21. Disposition (Rape Crisis Center, Home, Clinic Appointment, Etc.):
22. Other Relevant Comments:

NURSE

POLICE OFFICER Receiving Crime Lab Specimens

APPENDIX TWO-C

PROTECTION OF CHAIN OF CUSTODY OF EVIDENCE — Sample Form

Date ______________________ Floor ______________________

The following specimens numbered and labeled in the attached container were obtained from the above patient.

1. One swab in a test tube for acid phosphatase (add 1. ml. saline please).
2. One swab in a test tube for routine culture.
3. Two slides in a brown envelope for smears for examination for sperm cells.
4. Thayer-Martin culture plate for gonococcus culture inoculated.

Included in this box is an extra empty test tube if it is needed; and a brown envelope for hair, stains, etc., which the physician may want.

Label each specimen with complete name and hospital number.

Staple this card to the container before it leaves the E.R.

All persons handling the specimens must sign in order:

Doctor: ______________________ Time Date ______________________ am:pm
Nurse: ______________________ Time Date ______________________ am:pm
Tech: ______________________ Time Date ______________________ am:pm
Chemistry: ______________________ Time Date ______________________ am:pm
Microbiology: ______________________ Time Date ______________________ am:pm
Other ______________________ Time Date ______________________ am:pm

APPENDIX TWO-D

Bureau of Criminal Apprehension (BCA) Laboratory Capability

I. INTRODUCTION

The major types of evidence found in crimes of sexual assault are blood, semen, hairs and fibers. The following discussion will explain the necessity of control samples and what results can reasonably be expected from the various evidence types.

II. INFORMATION DETERMINABLE BY BLOOD TESTS:

A. Determine whether blood is human or animal origin.

B. Classification of dried blood stains into one of four major groups of "O", "A", "B", and "AB". Additionally, blood may be subgrouped in several other factors such as Rh, PGM, EAP, and other blood group systems, depending on size and sample condition.

C. Classification of blood from each person involved to determine the possible source of the dried stains. NOTE: It is of little value to show that blood on a suspect could have come from the victim without also showing that this blood *could not have come* from the suspect himself or one of his associates.

D. Identification of human blood as coming from a particular person is *not* possible. Also the age of a dried stain is not possible to determine.

III. INFORMATION DETERMINABLE FROM OTHER SIGNIFICANT BODY FLUIDS:

A. Seminal Stains:

1. Their identification on the victim's clothing, in vaginal swabs, or at the scene can be of value in corroborating statements of a victim.
2. If the suspect is a *secretor* his blood group can be determined from the seminal fluid. Additionally the PGM enzyme is present in seminal fluid which can also be determined and compared to that of a suspect.
3. Blood controls are necessary to determine the PGM enzyme present in the suspect and victim. Saliva controls are necessary to determine each involved person's secretor status.

B. Differentiation of secretors and nonsecretors:

1. Accomplished by using saliva controls from all involved persons.
2. Secretor — One of about 80% of the population who has in his other body fluids, (saliva, semen, perspiration, etc.) the same ABO blood group factors which are present in his blood.

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3. Nonsecretor — One of about 20% of the population who does not have ABO blood group factors in his other body fluids.

C. Saliva Stains:

If present on cigarette butts or clothing it may be of value for determining the blood group of the person who deposited it if this person was a secretor.

D. Limitations on seminal and saliva stain grouping:

1. Semen is often mixed with urine or vaginal secretions of the victim making grouping tests inconclusive.

2. The amount of blood group factor present on a cigarette butt or in a seminal stain may be insufficient to give conclusive grouping tests.

IV. INFORMATION DETERMINABLE FROM HAIRS AND FIBERS:

A. While hair and fiber examinations are circumstantial from an evidentiary standpoint, they can corroborate other evidence or testimony.

B. Hairs:

1. Hairs can be identified as animal or human in origin.

2. If human it can be sometimes determined if the hair was damaged, if the hair was torn in its removal, and the possible area of the body which the hair originated, such as head vs. pubic. Age and sex cannot be determined from a hair.

C. Results of hair comparisons:

1. Hairs match in microscopic characteristics and could have originated either from the same individual or from another individual whose hair exhibits the same microscopic characteristics.

2. Hairs are dissimilar and did not originate from the same individual.

3. No conclusion could be reached.

D. Control hair samples should consist of at least 12 full length hairs *pulled* from different locations on the head or pubic area.

E. Fiber examinations:

1. Identification as to type of fiber such as animal, vegetable, synthetic, or mineral.

2. Determinations as to type, color, size, weave, and overall microscopic appearance are made between questioned fibers and knowns. A positive match indicates a possible common origin.

3. Submit entire garment for control samples.

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V. INFORMATION CONCERNING CONTROL SAMPLES:

Most laboratory examinations are comparative in nature and a meaningful interpretation of results is often not possible without control samples. Consequently, as a general laboratory policy, blood grouping, secretor grouping, and other comparative examinations will be performed only after the appropriate controls from all persons involved have been received.

CHAPTER THREE

COUNSELING THE VICTIM OF SEXUAL ASSAULT

CHAPTER THREE

COUNSELING THE VICTIM OF SEXUAL ASSAULT

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COUNSELING THE VICTIM OF SEXUAL ASSAULT

I. INTRODUCTION

The following guidelines are intended for use by social service and mental health professionals, paraprofessionals, volunteer advocates, crisis intervention workers, telephone counselors and any other persons involved in a supportive role with sexual assault victims. The guidelines are intended to be adapted to a particular community, taking into consideration the needs of that community as well as the level of services available.

Since the needs of sexual assault victims cannot be met effectively without the combined efforts of law enforcement, medical, social service and prosecutorial personnel, it is necessary to be aware of the responsibilities of one another in dealing with sexual assault victims. Therefore, it is recommended that social service personnel be familiar with the guidelines presented elsewhere in this manual for police, hospitals and prosecutors.

This Chapter, **Counseling the Victim of Sexual Assault**, does not attempt to teach basic counseling techniques or crisis intervention skills. It is assumed that any person involved in the counseling of sexual assault victims is already trained or will receive training in general counseling skills. What is presented in this chapter is intended to supplement those skills by providing guidelines specific and unique to meeting the particular needs of sexual assault victims.

II. THE CRISIS OF SEXUAL ASSAULT

Sexual assault is an invasion of a person's physical and psychological being. It includes rape, same-sex assault, incest, child molestation, and any other sexual activity which a person is forced into without his/her consent.

A. *Basic Assumptions*

1. No person has the right to sexually violate another person.

2. Sexual assault is a potentially painful and intense experience in which the victim has to deal not only with the actual physical sexual assault but also the emotional aftermath which may occur. Sexual assault is an experience that may severely affect the victim's unique pattern of physical, emotional, sexual and social functioning.

3. Sexual assault is an act of power and violence expressed through sexual aggression. In sexual assault, the victim's control over his/her body and life is involuntarily in the hands of another person, through fear or coercion.

4. Sexual assault is surrounded by myths that may affect the response of the victim, and his/her family, friends and acquaintances.

B. *Implications for Counseling*

1. The victim of sexual assault should be viewed as a victim of crisis. The counseling process should focus on the victim's reactions and feelings to the sexual assault and not on other problems except as they relate to the sexual assault.

2. It is crucial for the victim to regain a sense of control over his/her own life. In the counseling process the victim has the right to be presented with all the options, but the decisions and choices should be completely his/her own.

3. The counselor's primary responsibility is to the victim — to be there to listen and to empathize with the victim's feelings; to inform, to explain, to clarify, to support, to aid with practical issues and concerns, and to assist the victim in dealing with people such as family, police, medical and legal personnel.

4. The counselor's role is to support the victim — not to investigate or judge the victim.

C. *Counselor Responsibility*

In order to function effectively in the victim's best interest, the counselor should:

1. Be fully informed in regard to the medical, law enforcement and legal procedures in order to provide information, explanation, and clarification of these procedures to the victim; be aware of resources such as support services, sources of financial aid, etc., in order to make effective referrals.

2. Be fully informed about the myths and facts of sexual assault and how they will affect the victim, friends, relatives and significant others (see Appendix A, "Myths and Facts").

3. Be knowledgeable concerning the variety of reactions of victims to the sexual assault during, immediately following, and subsequent to the experience.

III. THE VICTIM

A. *Patterns of Response to Sexual Assault**

It is important to remember that each victim will respond to the sexual assault in a unique manner reflecting 1) the uniqueness of the incident (e.g. degree of force used, relationship, if any, with the assailant); 2) the victim's developmental stage, particularly in the areas of sexuality, interpersonal relationships and support systems; and 3) the victim's previously developed manner of responding to a crisis. Studies indicate, however, that, as in any crisis situation, the responses of the sexual assault victim will follow a somewhat predictable and sequential pattern: *Phase 1: Impact, Phase 2: Outward Adjustment, Phase 3: Resolution, Phase 4: Integration.* It is essential to be aware of the *fluidity* of these phases for each victim, e.g. being in a later phase but

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*Adapted from Sandra Sutherland and Donald J. Scherl, M.D., "Patterns of Response Among Victims of Rape", *American Journal of Orthopsychiatry*, 40 (April 1970) 3: 503-511.

going back to behavior typical of an earlier phase or experiencing aspects of one phase while being in another. These phases should be viewed merely as a frame of reference from which to consider the variety of victims' emotional responses to sexual assault.

Phase 1: Impact. This is a stage of disorganization and disorientation immediately following the sexual assault. It may last a few hours or a few days. The victim's initial reaction is an immediate impact reaction in which there may be a variety of emotions including shock and disbelief, followed by anxiety and fear. How the victim expresses these emotions will vary. The victim may be crying or laughing, quiet or talking. He/she may experience a loss of appetite and sleep, or other physical trauma. It is during this phase that the victim will need to deal with decisions about medical attention, reporting to the police, notifying family and friends, and other immediate practical concerns, such as repair of locks, transportation, child care, etc.

Phase 2: Outward Adjustment. As the victim deals with practical concerns he/she will often deny, suppress or rationalize the sexual assault in an attempt to return some normalcy to his/her life. This period may last for a few days, a few weeks or years. During this period the victim does not want to talk about the sexual assault or have to deal with it in any way. The victim wants to return to his/her pre-sexual assault equilibrium which represents security, comfort and a feeling of being in control. He/she attempts to do so by denying that the assault happened. Although during this period the victim outwardly appears to have adjusted, he/she has not in fact resolved the sexual assault experience.

Phase 3: Resolution. The resolution phase usually begins when the victim is depressed and feels a need to talk to someone about the sexual assault. It may be precipitated by a specific incident, e.g. having to appear in court or seeing someone who resembles the assailant, or the victim may just find himself/herself constantly thinking about the assault and wondering why. The victim realizes the need to finally deal with the sexual assault both in terms of feelings about himself/herself as well as feelings about the assailant. Resolution occurs when the victim is able to experience anger and focus that anger where it belongs — on the assailant.

Phase 4: Integration. The period of integration is the culmination of all the previous phases. At this point the victim has accepted the fact of the sexual assault, has sorted out his/her feelings of guilt and responsibility — focusing anger on the assailant, and has integrated the sexual assault experience into the whole of his/her life, neither repressing nor being dominated by it.

B. *Victim's Feelings*

During the period following the sexual assault the victim may experience a variety of emotions. These feelings need not be viewed as stage specific; they can occur during any of the phases described above. Victims will vary in their manner of expressing, experiencing, and understanding the emotional impact of the assault situation. Emotional responses may be readily discernible through verbalizations or physical manifestations such as crying, shaking, restlessness, or they may be masked — the victim may appear calm, controlled and subdued. The appearance of the victim may be dependent upon several factors: exhaustion, the assault situation, state of shock, utilization of defenses in an attempt to deny or repress the attack. However the victim's feelings are expressed will be based upon the victim's previous pattern for coping with stressful situations.

The following presentation of the feelings frequently experienced by sexual assault victims* is based on the assumption that there is a continuum of feelings within each of the groupings.

1. *Fear - Anxiety Reactions.* Although the specifics of each sexual assault situation are different, many victims respond intially with a feeling of relief, "Thank God I'm alive — I could have been killed." This realization most often creates a feeling of fear of being attacked again. This fear response may be a specific fear of the assailant, especially if the assailant threatened to harm the victim again, or it may be a generalized fear: fear of people or things that remind the victim of the assault situation.

   Many victims will experience feelings of anxiety based on their fear of being attacked again. This anxiety may be evidenced by shaking, startled reflexes, disturbed sleeping patterns, nightmares, etc.

   This anxiety may extend to a fear of people in general. The victim may be particularly attuned to sexual innuendos, glances, etc., which used to be taken in stride. If the assailant was someone trusted by the victim, he/she may experience a feeling of loss of faith and trust not only in others but also in his/her own judgment.

   Many victims may have believed, prior to the sexual assault, that sexual assault couldn't happen to them, that they would be able to resist or somehow take care of themselves. Since any resistance was overcome either by force or fear, most victims may feel a loss of control. They may experience feelings of powerlessness and helplessness which in turn affects the way they view their own independence. If the victim has followed a life style of trusting people, leaving doors open, talking to strangers, hitchhiking across country, and so on, the sexual assault may be felt as an intrusion not only of the body but of his/her whole way of life.

2. *Guilt — Self-Blame — Embarrassment.*

   NOTE: Many victims have internalized the myth that the victim of sexual assault is somehow responsible or to blame for having been sexually assaulted. Regardless of the fact that a person may have acted carelessly or without good judgment (e.g. leaving a door unlocked at night), sexual assault is a crime committed *against* the victim, for which the assailant is responsible.

   In general, feelings of guilt and self-blame seem to vary in degree with the circumstances of the sexual assault, the extent of physical injury to the victim and the type of association with the assailant. Victims who have experienced severe physical injury during the sexual assault usually have less guilt feelings because of

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*Adapted, with permission, from the Minnesota NOW State Task Force on Rape handbook, *On Rape*.

the obvious evidence of their resistance. The victim who was sexually assaulted at home, however, may feel guilty about not having secured the house better. The victim who knows the assailant may have the most difficulty in resolving guilt feelings and conflicts over the sexual assault. This victim may, irrationally, blame himself/herself for poor judgment, seductive behavior, etc. The victim who does not physically resist due to fear may irrationally blame himself/herself for not preventing the assault — even if physical resistance would have been useless.

Many victims may feel ashamed and embarrassed about the sexual assault due to society's uncomfortableness with sexuality in general. Our bodies and sexual activity have always been regarded as private, and privacy has been stripped from the victim by someone else. Telling anyone at all may be painful and embarrassing. If the assailant was verbally abusive the victim may be embarrassed to repeat what was said. In addition, the victim may not know acceptable terminology to describe what happened sexually. The victim may also feel embarrassed during the medical exam when his/her body is again exposed and is the object of attention and inspection by strangers.

3. *Anger.* Anger is perhaps the most appropriate feeling the victim of sexual assault can experience. Anger, directed toward the assailant, can be the beginning of a healthy resolution of the sexual assault experience. Many victims may have difficulty expressing this anger verbally although ventilation of the anger may also take the form of reporting and prosecuting.

C. *Needs of the Victim*

The most immediate need of every victim of sexual assault is the need for safety. This should be the primary concern of the first person to be in contact with the victim following the sexual assault.

Beyond the need for immediate safety, each victim of sexual assault will have different needs, ranging from the need to have access merely to factual information and practical resources to the need for support from someone who can help deal with the victim's intense feelings about the sexual assault. The range of services available to sexual assault victims, whether provided by police, hospital, legal, social service, or crisis center personnel, should reflect the range in victims' needs:

1. *Crisis Intervention.* Frequently the support systems, e.g. family and friends, normally available to a person during a crisis, will be unable to help the victim cope with the crisis of sexual assault. For this reason, many victims, and also their significant others, need to have outside support available in order to be able to work through the immediate crisis situation. Immediacy of this service is crucial and wherever possible should be available to the victim on a 24-hour basis. Crisis intervention may involve providing information to the victim over the phone, providing support at the scene, through the police investigation and hospital examination, providing short-term counseling, and/or making appropriate referrals.

2. *Assistance with Life-Sustaining Needs: Housing, Transportation, Child Care.* Victims who have been assaulted are frequently afraid to be alone in their homes or

to travel by themselves. Many times assailants will threaten to return if the victim goes to the police. Victims may need:

- Transportation to or from the hospital, police station, or home.
- Housing for the immediate night or day, and possibly the next few days.
- Child care, e.g. while the victim is at the hospital or with the police.
- Contact with family or friends who would be comforting and helpful. There may be various reasons that a victim may not want to be with his/her family. A quick assessment of these reasons should be made and the victim should be helped in making the decision. Fears of how parents or significant others will react may be overestimated, or they may be real, but they need to be dealt with.
- Assistance in securing the home or helping the victim feel safer at home, e.g. changing locks, contacting Operation ID, finding a roommate, etc.

3. *Medical Information and Care.* The victim of sexual assault has the right to a sensitive and thorough medical examination. The victim should be encouraged to seek medical attention for treatment of injuries, venereal disease, and pregnancy as well as for gathering of evidence if there is any possibility that the victim will want to prosecute. Full medical information, with all the options and alternatives, should be provided to allow the victim to make his/her decisions from a position of knowledge rather than ignorance.

4. *Legal Procedural Information.* Decisions regarding whether or not to report and whether or not to prosecute are very personal ones and should be made by each victim on the basis of as much information as possible. The victim needs to know what to expect at each step of the legal process *before* making a decision.

5. *Advocacy.* If the victim chooses to receive medical attention, to report to the police, and/or to prosecute, he/she may still feel intimidated and/or confused by the system and may want someone to accompany him/her through the system representing his/her interest. The advocacy may come from within or outside the system and does not necessarily imply an adversity of interest between the system and the victim. Rather, advocacy may merely be a matter of assuring that there is someone the victim can turn to at any point during the medical-legal process for information, explanations, or support.

6. *Individual Counseling.* Sexual assault, or its attempt, is viewed as a crisis. It is an act of violence. The crisis is situational, an unexpected event which is disruptive. The threat to life is a primary reaction. Along with this comes the feeling of helplessness. The loss of control of oneself and the humiliation are feelings that are not easily overcome.

   Short-term counseling might provide a catharsis for the victim, helping that person deal with the trauma and the feelings connected with the sexual assault. The victim may need short-term support in regaining a sense of control over his/her life. This short-term support aimed at helping the victim learn to cope, may be the catalyst for working through continuous emotional reactions and may ultimately prevent the need for more intensive therapy.

   For some victims, however, the traumatic reaction to a sexual assault may be such a psychological shock that intensive, long-term counseling may be needed. The emotional responses of the victim may interfere drastically with the day-to-day functioning of that individual. The victim who feels guilty about the incident may be triggering an emotional response that is difficult for that person to overcome. The guilt in not having prevented or stopped the action in a sexual assault may affect the person's ability to relate to other people, feeling they see him/her as responsible and shameful. The victim who feels anger may find his/her sexual attitudes and sexual activity in a difficult and/or negative place. These types of reactions and others may stimulate the victim to seek professional long-term help in working through negative or uncomfortable attitudes that affect functioning.

7. *Group Counseling - Support Group.* In addition to dealing with his/her own feelings about the sexual assault, the victim may be concerned about other people's attitudes and reactions toward him/her. The internal conflicts that the victim may be experiencing may also interfere with that person's ability to relate to other people. The concern with what others think about him/her and how it will affect how others react to him/her may immobilize or hamper the individual in relating to others.

   A support group, as experienced in group counseling, is a milieu where the victim can share personal fears and perhaps find that others share those fears. A group provides an atmosphere of acceptance of members that will aid an individual in relating feelings and fears about how others relate to him/her.

   A group involvement may provide the opportunity for the victim to realize that other persons experience similar emotions and responses. The ability to share these feelings may stimulate a working-through of the emotional difficulties resulting from the sexual assault.

8. *Family Counseling.* The victimization in a sexual assault may affect more than the individual immediately involved. The victims of such a crime may include an entire family.

   Family members also enter this experience with preconceived notions and attitudes about sexual assault victims and about the family member assaulted. The combination of these attitudes and feelings creates the potentially fertile ground for family difficulty.

   Family counseling may become necessary when the trauma affects normal family functioning. The family may find it necessary to meet as a unit to work through the attitudes and feelings that interfere with positive family interaction.

   The sexual assault victim will need familial support to effectively deal with the personal trauma. The lack of family understanding will affect the ability to cope with the experience.

9. *Referral.* An individual in a crisis situation may feel the need to reach out for help. The manner in which that individual is treated in the first, and perhaps only, call

or contact will possibly determine whether that person will continue to seek the help that may be desperately needed.

A well defined and coordinated referral network will help insure that the victim is not given vague answers or indefinite information, or gets lost in the system. The initial contact, whether it is the police, the hospital, or an information and referral service, should understand the available service network for a sexual assault victim. Service to a victim should be a part of an organized system that includes: social services, advocate services, police referral, medical referral, and legal referral. Such a system should address the emotional needs, the legal needs, and the medical needs of the victim. Referring a victim to the appropriate person in that system should be consistent with the victim's feelings, needs, and wants.

IV. THE COUNSELOR/SUPPORT PERSON

A. *Who Counsels/Provides Support*

This will vary from community to community and will be dependent on the size of the community, the types of services already available, the concern of the community, etc. Counseling/support of sexual assault victims could be provided by trained volunteers, paraprofessionals, or professionals. Possibilities include "Crisis Line" volunteers, social service workers, public health or school nurses, professional counselors, public or private mental health facilities, family planning clinics, or sexual assault crisis center personnel. The role of the counselor would vary accordingly. What is of primary significance is not who provides the services but rather that sexual assault counseling services *do* exist and that the community's law enforcement, medical, and legal personnel who work with sexual assault victims as well as the community at large *know* who, how, and when to contact a counselor/support person and know what they can expect from that person.

B. *Needs of the Counselor/Support Person*

It is unrealistic to expect that every counselor/support person can meet the needs of every sexual assault victim. The counselor/support person needs to stay in touch with his/her own emotional reaction to the victim. If the counselor has strong negative feelings about a particular victim or feels he/she cannot handle the case alone or at all, the victim should be referred to someone else. This should be seen as a recognition of a person's limits rather than as a sign of weakness. It is quite possible that the counselor/support person's own value system or job situation may prevent him/her from meeting certain needs of the victim, e.g. a request for an abortion referral. In this case again the counselor should refer the victim to another support person who can make such a referral without fear of job loss or interfering with one's own value system.

The counselor/support persons in each community need to work as a team of people who communicate with each other and support each other. Providing support to victims of sexual assault can be an emotionally and physically exhausting experience. Counseling/support persons need to learn their personal limitations and know they can turn to someone, in confidence, for support.

Training. The counselor/support persons should receive training which will prepare them to deal with the emotional, medical, legal and political aspects of sexual assault that will be relevant to the victims they will counsel. Such training should be geared to meet the needs of each counselor/support person by *supplementing* skills, training, education and/or experience already gained with aspects specific to meeting the needs of sexual assault victims.

C. *Role of the Counselor/Support Person*

Remember that the sexual assault victim has two equally important needs: access to someone who can help him/her deal with the feelings about the experience and access to factual information/practical resources in order to facilitate decision-making. The counselor/support person can help with both of these.

The ideal support system or person for a victim of sexual assault is one which:

- Allows the victim to be himself/herself in feelings and in needs.
- Allows the victim to heal at his/her own pace.
- Anticipates reactions to the crisis without forcing the process.
- Realizes that people can heal and emerge stronger from a crisis.

It is important for the counselor/support person to be aware of and to communicate what he/she can and cannot provide for the victim. This will avoid raising unrealistic expectations in the victim and will help the counselor avoid frustration and feelings of failure when the victim's preexisting life problems persist. Such problems may be brought into focus more sharply during such a time of trauma, and conflicts between the victim and other people important to him/her may surface.

1. *The Counseling/Support Process - Responding to the Emotional Needs of the Victim.* A major role of the counselor/support person is to respond to the emotional needs of the victim. The following guidelines provide suggested ways of being with and responding to the victim. These guidelines are not meant to be used as techniques but rather as ideas to stimulate thinking and to be incorporated and modified into the counselor/support person's own style of counseling. The list is not all-inclusive nor does the order of presentation reflect any sequential order in the counseling support process.

   a. *Confidentiality*. It is important throughout the counseling/support process to assure the victim of confidentiality. Remember that many victims are ashamed and embarrassed that they have been sexually assaulted, and they need to know that you will not discuss this situation with anyone without permission, e.g. to make a medical referral. This is particularly important if a third party contacts you about the victim. That party, as well as the victim, should know that the confidentiality between you and the victim will be respected.

   b. The important aspect of the counseling/support process is not what you do or say, but how you are. Simply being there for the sexual assault victim may be enough. The most beneficial counseling responses are genuine feelings of warmth, concern, caring, empathy, and desire to function supportively and effectively. These feelings are transmitted to the victim.

c. *Listening.* Listen in a way that supports and validates the victim's feelings, encouraging him/her to express whatever feelings he/she has in whatever way he/she wants to.

- Do not attempt to redefine the situation as being more or less critical than the victim sees it. Keep in mind that each victim's reaction to the sexual assault will be based partially on his/her perception of the event in its social context plus his/her previous experience in coping with stressful events. Also keep in mind that the victim's attitudes toward men, women, violence, and sexuality as well as his/her own feelings of self-worth will affect his/her reaction. The victim is the only one who can determine how critical the situation is, since the determination must be based on his/her values and perceptions.
- Go with the victim's style of expressing his/her emotions. This may range from *expressed* — crying, shaking, verbalizing, expressing anger, etc. to *controlled* — shocked (dazed, confused), intellectualizing as if it happened to someone else, or simply a silent reaction.
- Help the victim to clarify his/her feelings. Communicate an acceptance and understanding that his/her reaction is a normal reaction to what has happened.

d. It may help the victim to be told that this experience may cause a disruption to his/her life for a while.

e. Assure the victim that he/she has not been singled out for an attack, but that what has happened to him/her has happened to thousands of others.

f. Allow the victim to talk through as much of the sexual assault as he/she wants to. Finding out that he/she can share this experience with someone who is not shocked by hearing it can be very reassuring to the victim.

g. Anticipate reactions or feelings to the victim, without forcing them, e.g. "Some victims find they can't sleep at night". Knowing what to expect may help the victim deal with his/her reactions better. Physical problems, loss of sexual interest or changes in response, changes in patterns of living, fears which begin to restrict activity, loss of self-confidence — all these may occur long after the victim feels he/she has dealt with the sexual assault.

h. Help the victim work through to a healthy anger; that is, anger directed toward the assailant, rather than towards himself/herself.

2. *Assisting in Decision-Making.* The victim of sexual assault has just been through a damaging experience in which he/she was forced to submit against his/her will. In order to regain a sense of control over his/her own life, the victim needs to be informed of his/her options and then to be supported in whatever decisions he/she makes. The counselor/support person's role is to help the victim clarify his/her concerns, provide the information necessary in order for the victim to come to a

decision, and focus the victim's decision on action that needs to be taken in priority order. Decisions may need to be made about: medical treatment, reporting to the police, safety precautions, emergency clothing, transportation, child care and housing arrangements, and informing relatives or employers. The counselor/ support person's awareness of services and alternatives can be extremely important.

a. *Seeking Medical Treatment.* In an emergency medical situation, this is a necessity and the victim should be transported by an ambulance or the police.

- The victim should be made aware of the fact that a prompt medical evidentiary examination is necessary in most cases to even consider a possible prosecution. If the victim is unsure about whether to report to the police and/or become involved in prosecuting, he/she should be encouraged to obtain an evidentiary examination should he/she decide later to report and prosecute.
- If the victim chooses not to report to the police, he/she should be encouraged to seek medical attention for venereal disease, pregnancy and possible injuries. It is hoped that most hospitals no longer automatically report a sexual assault case to the police but in areas where this is the hospital's policy the victim should be made aware of this and be presented with other medical alternatives if he/she so desires.
- If the victim does decide to seek medical attention, he/she should be told not to *bathe, shower, douche, or change clothes* before going to the hospital and/or the police since this could destroy possible evidence.
- The counselor/support person should inform the victim of what is involved in the medical examination and the purpose of each aspect.
- The victim should be made aware of the questions that will most likely be asked and the purpose of these questions, e.g. regarding last intercourse, contraceptive usage, venereal disease history.
- The victim should be informed of the importance of the venereal disease and pregnancy examination and treatment, and the alternatives available.
- The victim should be made aware of the fact that the 1975 Minnesota Criminal Sexual Conduct Law provides that medical costs arising from examining the victim for purposes of gathering evidence be paid by the county in which the offense was committed. However, some counties require the sexual assault be reported to the police in order for the victim to be reimbursed, and the victim should be informed if this is the case.

(Please read Chapter Two, **The Medical Examination and Treatment of Sexual Assault Victims**, to become more familiar with the medical procedures.)

b. *Reporting to the Police.*

- Reporting to the police can be a means for the victim to regain a sense of control over his/her life as well as to ventilate some very healthy anger. Whenever possible the victim should be encouraged to report to the police, even anonymously (if a third-party reporting system is available), since many assailants assault more than once.

- If the victim expresses hesitation to report, the counselor/support person should help the victim sort out his/her feelings about reporting. If the victim's concern is based on a fear of the system and how he/she will be treated, the counselor/support person may help allay that fear by giving the victim the name(s) of sensitive, concerned law enforcement person(s).
- If the victim decides to report, he/she should be made aware that the police will need to question him/her and to conduct an investigation and gather physical evidence from both the victim and the scene, if available. The procedures of police investigation should be explained to the victim.
- Police questioning should only concern matters relating to the incident; however, police may need to ask embarrassing questions of the victim and the purpose of these questions should be discussed with the victim.
- Many police refer victims to an advocate/support person and work closely with such counseling services.

(Please read Chapter One, **Law Enforcement Investigation of Sexual Assault Crimes**, to become more familiar with the police procedures.)

c. *Becoming Involved in Prosecution.*

- Remember, reporting the sexual assault to the police does not mean the victim will have to prosecute. That decision can be made later by the victim.
- The counselor/support person should be familiar with the changes in the 1975 Minnesota Criminal Sexual Conduct Law (see page 87 of this manual for a summary of the new law). Briefly, the new law:
    - —Classifies criminal sexual conduct into four degrees depending on the degree of force and nature and extent of injury to the victim.
    - —Stipulates that the victim's testimony need not be corroborated, although corroboration may improve the chances of gaining a conviction.
    - —Provides that the victim need not prove resistance.
    - —Provides that, with a few exceptions, evidence of the victim's prior sexual behavior is not admissible in court.
    - —Provides that medical costs arising from examining the victim for purposes of gathering evidence be paid by the county in which the offense was committed.
- Sexual assault is a crime against the State and is therefore prosecuted by a county attorney, representing the State. The victim is the prosecution's key witness.
- The victim needs to be aware of what will be expected of him/her throughout the legal process.
- The victim needs to be supported throughout the entire process whether or not the case is prosecuted or a conviction is obtained.

(Please read Chapter Four, **The Prosecution of Sexual Assault Crimes**, to become familiar with the legal procedures.)

d. *Telling Family and Friends.*

- The counselor/support person should help the victim assess which people in

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his/her life may provide support and understanding. The victim, however, should make the decision about who he/she wants to share with.

- The counselor/support person may offer to help the victim tell family/friends if he/she wants this. Sometimes a third party can be a buffer.
- Family/friends may need an initial period of ventilation. This crisis has disrupted their lives also and brought forth feelings of worry, fear, and a recognition of their inability to protect the victim from harm. Sometimes the hurt and anger experienced by the family may supercede their concern for the victim and result in a blaming attitude. The crisis may bring underlying problems in relationships to the surface. The victim may need the counselor/support person for listening-ventilation and assistance in coping with these reactions.
- The counselor/support person might consider, with the victim's permission, counseling for family members also, especially if:
  - —The family becomes overprotective of the victim and does not allow him/her to resume daily activities.
  - —The victim and his/her partner are unable to resume, after what they consider to be a reasonable time, their usual pattern of sexual activity and level of trust in each other.
  - —There are feelings that the victim is "ruined for life" or has disgraced the family.

  (Please read Appendix B, "A Note to Those Closest to Rape Victims".)

3. *Institutional Advocate.* This may be the first acquaintance with the law enforcement and criminal justice system for many victims, and the nature and timing of the medical examination is of particular stress. What is viewed by the working professionals as regular and simple procedures, such as signing a "consent to examine" form or keeping of the victim's clothes for evidence, may provoke feelings of overwhelming helplessness and anxiety in the victim. Hospital and police personnel may, at times, be too busy to give information in a reassuring slow manner. A clarification of what is happening and why it is necessary will help the victim regain a sense of control over what happens to him/her.

4. *Assessing Adjustment and the Need for Referral.* Not all sexual assault victims need or want counseling, and the vast majority do not need professional psychiatric counseling. Sexual assault can act as a catalyst, as can other life crises, in provoking the victim to reassess his/her lifestyle and experiences in interpersonal relationships. This introspection can be a maturing experience. However, an inability to resume normal tasks, failure to cope with the reactions of the victim's social network, or lack of resolution of introspection may necessitate referral for long-term counseling or psychotherapy.

5. *Follow-Up.* It is important that the victim knows that he/she can contact the counselor/support person later for support or information. The counselor/support person should take the initiative to call the victim, but only if the victim has agreed that he/she wants this. The purpose of the follow-up is to reassess the victim's needs, provide support, remind the victim of medical follow-up for venereal disease or pregnancy and, in general, to reassure the victim of the counselor/support person's availability.

APPENDIX

CHAPTER THREE

APPENDIX THREE-A

Myths and Facts About Sexual Assault *

Myth 1: Rape is provoked by the victim. Women who are raped are asking for it.

Fact: Amir's study indicated that 60-70% of rapes are at least partially planned beforehand by the rapist. The study also shows that the victim is usually threatened with death or bodily harm if she resists. Why would a woman go out of her way to be humiliated, to be beaten or possibly killed. The problem with this myth is the way it takes away the criminal blame from the rapist and shifts the responsibility for the crime to the victim.

Though provocation may consist of only a "gesture" according to the Federal Commission on Crimes of Violence, only 4% of reported sexual assaults involved precipitative behavior on the part of the victim and most of this provocation consisted of nothing more than walking and dressing in a way that is socially defined as attractive. No woman's behavior or dress gives a man the right to rape her.

Myth 2: Only young, beautiful women in mini-skirts are raped. It can't happen to me, only other types of women get raped. Only "bad girls" get raped.

Fact: A victim of sexual assault is a victim of *violence*. Rapists choose their victim without regard to physical appearance. Victims are of every age, shape, race, and social class.

Reported age range is six months to 93 years.

Myth 3: Women are raped when they are out alone at night, primarily in dark alleys, so if women stay at home, they'll be safe.

Fact: Any woman, regardless of place of residence, social or economic class, age, appearance or other factors, can be a victim of rape.

Studies show that 1/3 to 1/2 of sexual assaults are committed in the victim's home, and half of all rapes occur in a private residence.

Myth 4: Sexual assault occurs only among strangers. If I avoid strangers I will not be raped.

Fact: Though 66% of the rapes studied by Amir did occur among strangers, a full 34% involved cases where the victim and the offender knew each other in some way. In 14% of the cases the rapist is a close personal friend, a member of the family or friend of the family. When considering these statistics, it is important to remember that Amir dealt with REPORTED cases of forcible rape and a woman is more apt to report being raped by a stranger than to press charges against a friend or relative.

Myth 5: Any woman could prevent the rape if she really wanted to. No woman can be raped against her will.

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*Prepared by Eileen Keller, Assistant Director, Minnesota Program for Victims of Sexual Assault, 430 Metro Square Building, St. Paul, Minnesota 55101; LEAA Grant #4317013675

Fact: Amir found that in the majority of rapes the woman is threatened with death if she resists. In 87% of all rapes the rapist either carries a weapon or threatens her with death. Roughness occurs in 29% of the crimes, non-brutal beatings in 25%, brutal beatings in 20%, and choking in 12% of all rapes. No force whatsoever exists in only 15% of all rape cases studied by Amir and these instances usually involved the rape of a child.

In a study of 80 rape victims in Boston, it was found that 50% of the women had been threatened with a weapon, another 30% had been manhandled and 20% had been threatened verbally. The primary reaction of almost all women to the rape was fear for their lives. In view of fear of injury or death, the loss of control over her life and body, and the humiliation that a rape victim undergoes, it is amazing that so many people still believe the preposterous myth that victims really enjoy rape.

Myth 6: Rape only occurs in large cities.

Fact: Although the reported number of assaults is higher in an urban area, sexual assault does happen in every area — the city, the suburbs, and rural areas.

Myth 7: Most rapes involve black men and white women.

Fact: FBI statistics show that 3% of rapes involve black men and white women. 4% involve white men and black women. Most rapes involve a rapist and victim of the same race and socio-economic class.

Myth 8: Rape is an impulsive, uncontrollable act of sexual gratification. Most rapes are spontaneous (i.e. a sexually frustrated man sees an attractive woman and just can't control himself).

Fact: Amir found that 71% of all rapes were planned; the rapist has it in his mind to rape a woman (any woman) or he has a specific woman in mind. Eleven percent of rapes were partially planned. For example, a rapist takes advantage of a woman in a situation where she is particularly vulnerable (when she was hitchhiking, walking alone at night, drunk, etc.) and only 16% were spontaneous or "explosive" rapes where the rapist had no prior intent to commit rape.

From the viewpoint of a rapist, rape is primarily a crime of violence or hate. Sex is used as a weapon to inflict violence, humiliation, and/or conquest on a victim.

Myth 9: Rapists are abnormal perverts or men with an unsatisfied sex drive. Only "sick" or "insane" men rape women. The primary motive for rape is sexual.

Fact: Rapists have a normal sex drive, are generally sexually active, and exhibit "normal" types of behavior, with the exception of a greater-than-average tendency toward expression of violence.

Studies show the major motive for rape is aggression, not sex. The rapist is seen to have a normal personality but an abnormal tendency to be aggressive and violent. Amir says it is this violence "which makes him (the rapist) a danger to the community".

Rapists are married or have available sexual partners.

Myth 10: It is easy to prosecute rapists.

Fact:	In 1970, at least 365 rape cases were reported to law enforcement agencies in Minnesota. Only 23 of these cases were prosecuted and of those only 12 resulted in conviction.
Myth 11:	Women frequently cry "rape"; i.e. there is a high rate of false reporting.
Fact:	Studies show that only 2% of rape calls are false reports which is no more than in the reporting of other felonies.

APPENDIX THREE-B

A NOTE TO THOSE CLOSEST TO RAPE VICTIMS: HOW YOU CAN HELP*

How does rape affect a woman? How does rape affect those closest to the rape victim? How can you help? Far more than anyone else, it is the people closest to the victim who influence how she will deal with the attack.

Most women who have been raped react to the terror and the fear that is involved. Often a woman's immediate reaction is "I could have been killed." The best way for you to understand what she is feeling is to try to remember a situation where you felt powerless and afraid. You may remember feeling very alone, fearful, and needing comfort.

Often a raped woman needs much love and support. Affection is very important. Try to show her, in your own way, that you care about her and that you would like to help. This can help to break down her loneliness and alienation.

It seems advisable for the woman to talk about the rape; however, it is not possible to generalize about how much the victim should be encouraged to talk about it. Most women do not seem to like specific questions; they tend to seem probing and callous. To probe in these areas may only make it harder for the women to deal with the rape because she may feel like you are judging her.

Instead you should share feelings and ask her what bothers her. These should not be threatening and should allow her to talk about her most immediate concerns. Remember, too, the woman may want to talk about other things. Often the rape may leave the woman concentrating on other problems and it is important that she talk about these. Probably the most practical suggestion is that you communicate your own willingness to let her talk. Because of your closeness to her, the woman may be more sensitive to your feelings. If the rape distresses you, it may be impossible for her to talk to you. She may also try to protect you. In these and other such cases, where she really will not be able to talk with you — encourage her to talk to someone she trusts. Remember that the rape has brought on feelings of powerlessness — encourage her to talk to whom she wishes, when she wants. This may be more helpful than feeling that it is necessary to talk to you. If she feels she needs professional help, encourage her to do so. This is not a sign of weakness or failure on your part or on her part. Most of us need special help at times of crisis.

Whether or not counseling is sought, it is not a replacement for warm, concerned, loving communication. A counselor may help, but he or she can not replace your role in the victim's life. Rape not only affects the woman, but also you, as it plays upon your own fears and fantasies. Try to recognize the fears for what they are; otherwise you may end up projecting them on the woman and cause some serious problems for your relationship with her. Give her the right to make her own decisions. Don't be over-protective.

It should be noted that, if the woman has pressed charges, the whole process of prosecution involves much stress. Your awareness of the legal processes and problems involved, and your support will be helpful.

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Adapted by Sue Remus, Coordinator, NIP Rape Counseling Center, Minneapolis, Minnesota.

CHAPTER FOUR

THE PROSECUTION OF SEXUAL ASSAULT CRIMES

CHAPTER FOUR

THE PROSECUTION OF SEXUAL ASSAULT CRIMES

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Appendix 105

THE PROSECUTION OF SEXUAL ASSAULT CRIMES

I. INTRODUCTION

The following guidelines are intended for use by prosecutors' offices throughout the State of Minnesota. The guidelines are intended to be adapted to each prosecutorial office, taking into consideration the particular needs of the community, as well as the variations in size of jurisdictions and in staffing patterns, which directly affect the availability of time and resources in any given prosecutor's office.

Since effective criminal sexual assault prosecution relies on the combined efforts of law enforcement, medical, social service and prosecutorial personnel, it is necessary to be aware of the responsibilities of one another when dealing with sexual assault. Therefore, it is recommended that prosecutorial personnel be familiar with the guidelines presented elsewhere in this manual for law enforcement, medical, and social service personnel.

This Chapter, **The Prosecution of Sexual Assault Crimes**, presents a summary of the 1975 Minnesota Criminal Sexual Conduct Law which made major changes affecting prosecution of sexual assault cases. An explanation of the court process is also provided, both as a synopsis for legal personnel to use in familiarizing victims and other witnesses, and also as background information for non-legal personnel whose responsibility it may be to prepare and/or support the victim through the legal proceedings. The chapter also presents general principles that should govern the prosecution of sexual assault cases, the role of the prosecuting attorney, the role of the victim support person, the victim's role in the prosecution, and other considerations specific to the prosecution process in sexual assault cases.

II. THE 1975 MINNESOTA CRIMINAL SEXUAL CONDUCT LAW

A. *Introduction*

In order to achieve effective prosecution of sexual assault crimes, it is essential that law enforcement, medical, social service as well as prosecutorial personnel be aware of the legal standards required by the State of Minnesota.

In 1975, the Minnesota Legislature took a significant step when it enacted a new and far-reaching Criminal Sexual Conduct Law (Minnesota Statutes Sections 609.341-609.351)*. The changes are comprehensive. Under the new law, criminal sexual conduct includes not only rape but also same-sex assault, child abuse, and any other sexual activity which a person is forced into without consent. The law provides that sex offenders and victims, male or female, be treated equally. It also provides a rational scheme for determining the degrees of severity in sex crimes. In addition, the statute states that resistance by the victim and corroboration of the victim is not required although as a practical matter it serves to strengthen a prosecution in most cases. These changes make Minnesota's sex offense law one of the most progressive in the nation. The following is a detailed summary of the new law.

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*See Appendix A for a complete copy of the law.

B. *Definitions*

The new definitions are broadly inclusive, yet precisely applicable to any type of sex related offenses.

Actor — Person accused of criminal sexual conduct.
Complainant — Person alleging to have been subjected to criminal sexual conduct.
Force — When an actor commits or threatens to commit a crime against the complainant who believes the actor is capable of doing what is threatened and therefore causes the complainant to submit to the actor's wishes.
Consent — A voluntary and unmistakable agreement to perform a particular sex act, which must be at the time of the act.
Intimate Parts — Includes the primary genital areas, groin, inner thighs, buttocks, or breast of any person.
Mentally Defective — A person suffering from a temporary or permanent mental defect that makes that person incapable of understanding his/her conduct.
Mentally Incapacitated — A person who is rendered temporarily incapable of understanding or controlling his/her conduct due to the influence of alcohol, drugs, or any other substance administered to that person without consent, or due to any other act committed upon that person without his/her agreement.
Personal Injury — Bodily harm, severe mental anguish or pregnancy.
Physically Helpless — A person physically unable to communicate that he/she does not consent to an act and that condition is known, or reasonable should have been known, to the actor.
Position of Authority — A parent or guardian or a person who, even for a brief period, is responsible for the health, welfare or supervision of a child.
Sexual Contact — Includes the following acts committed without the complainant's consent (except where consent makes no difference, such as with a child), for the actor's aggressive or sexual satisfaction:
(a) intentional touching by the actor of complainant's intimate parts;
(b) forcing complainant to touch another's intimate parts;
(c) forcing another to touch complainant's intimate parts;
(d) in any of the above instances, the touching of the clothing covering the immediate area of the intimate parts.
Sexual Penetration — Sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, no matter how slight, into the genital or anal openings of complainant's body by any part of the actor's body or any object used by the actor, if accomplished without complainant's consent (except in circumstances where consent is not a legal defense). Emission of semen is not necessary to a finding of sexual penetration.

C. *Degrees of Criminal Sexual Conduct*

The new law also defines four degrees of criminal sexual conduct. Generally, the major distinction between the degrees are: (1) First and Third degrees both require penetration; (2) Second and Fourth degrees both require contact; (3) in all other respects First and Second are identical and Third and Fourth are substantially identical, with the major difference being a higher degree of force or coercion being required in First and Second versus a lesser degree of force required in Third and Fourth.

First degree criminal sexual conduct is punishable by up to 20 years imprisonment and occurs when the actor sexually *penetrates* another person and one of the following circumstances exists:

a. The complainant is under 13 years old and the actor is more than three years older, (mistake of the complainant's age or complainant's consent are not legal defenses); or

b. The complainant is 13 to 16 years old and the actor is four years older *and* is in a position of authority over complainant, and uses such authority to force the complainant to submit, (mistake of age and consent are not legal defenses); or

c. Circumstances at the time of the act cause the complainant to reasonably fear that great bodily harm will result to him/her if he/she does not submit; or

d. The actor has a dangerous weapon and threatens complainant with it in order to get complainant to submit; or

e. The actor personally injures complainant *and* either 1) forces sexual penetration, or 2) knows or has reason to know the complainant is mentally defective, mentally incapacitated or physically helpless; or

f. The actor is aided by others who use force or a dangerous weapon to get complainant to submit.

Second degree criminal sexual conduct is punishable by up to 15 years in prison and occurs:

a. If the actor has sexual *contact* (first degree requires penetration) with another *and*

b. One of the above (a-f) circumstances of first degree exists.

Third degree criminal sexual conduct requires sexual penetration and is punishable by 10 years imprisonment, if one of the following circumstances exists:

a. Complainant is under 13 years old and the actor no more than three years older (in First and Second degrees, actor must be more than three years older); or

b. Complainant is aged 13 to 16 and actor is more than two years older and not in a position of authority; if, however, the actor is no more than four years older and shows he/she believed complainant was over 16, actor can only be imprisoned up to five years; or

c. The actor uses force to penetrate without inflicting personal injury, as in First degree; or

d. The actor knows complainant is mentally defective, mentally incapacitated or physically helpless (consent is no legal defense).

Fourth degree criminal sexual conduct does not require sexual penetration (unlike First and Third degrees) and is punishable by up to five years imprisonment if the actor sexually *contacts* another and any of the following exist:

a. The complainant is less than 13 years and the actor is not more than three years older than the complainant; or

b. Complainant is 13 to 16 years old and actor is more than four years older or is in a position of authority, which position the actor uses to coerce submission; or

c. The actor forces the contact (without inflicting personal injury as in second degree); or

d. The actor knows the complainant is mentally defective or incapacitated or physically helpless (consent is no legal defense).

NOTE: In Minnesota the law states that a child under 14 years of age is incapable of committing a crime and must be prosecuted in juvenile court. A finding of delinquency in juvenile court is not a criminal record. A child between 14 and 18 years of age is presumed incapable of committing a crime, but if the juvenile correctional facilities are inadequate for rehabilitating the child, the child can be certified by the juvenile court to stand trial as an adult. A person who is 18 years of age or older is an adult under Minnesota law. Accordingly, an actor under 14 years old cannot be prosecuted under the Minnesota Criminal Sexual Conduct Law, and an actor between 14 and 18 years old can only be prosecuted if the actor is certified to stand trial as an adult.

D. *Subsequent Offenses*

The new law also provides a minimum three-year sentence for a second offense within a fifteen-year period following the first offense, unless the defendant successfully completes an anti-social sexual behavior treatment program.

E. *Evidence*

The new law makes sweeping changes in the evidence requirements in a sexual assault prosecution.

1) The law specifically states that the victim's testimony need not be corroborated.

2) The victim is also not required to have resisted the actor.

3) A major change in evidence no longer permits the victim's previous sexual conduct to be used in court. The victim will no longer be subject to the familiar defense tactic of utilizing past sexual behavior. The very specific exceptions to this general rule are:

a) when the victim has willingly engaged in very similar sexual behavior under similar circumstances in the prior calendar year and the actor-defendant claims the victim therefore consented to the act, or else fabricated the incident;
b) when evidence is shown that semen, veneral disease or a state of pregnancy was present at the time of the assault or evidence that shows venereal disease or pregnancy occurred between the assault and the trial;
c) evidence of past sexual conduct between the complainant and the defendant;
d) evidence to show the complainant has not told the truth at the trial;
e) evidence that the complainant has previously made wholly unsubstantiated claims of criminal sexual conduct.

Introduction of the above exceptions must be in accordance with a set procedure that requires court review and court permission *before* any such evidence can be presented at the trial.

F. *Court Instructions*

The court can *no* longer instruct juries that:

a) A complainant who has consented to prior sexual intercourse with other persons would be likely to consent with defendant and that this prior sexual conduct in and of itself may be used in determining complainant's credibility; or
b) Criminal sexual conduct is easily charged but difficult to disprove; or
c) The complainant's testimony should be scrutinized more closely than that of any other witness in any other felony.

It should be noted that potential for lesser included offenses instructions might be applicable.

G. *Scope of Criminal Sexual Conduct Law*

The law does not cover adults living together and maintaining an ongoing voluntary sexual relationship. Married persons also are not covered under the law unless living apart with one having filed for separate maintenance or dissolution of the marriage.

H. *Cost of Medical Evidentiary Exam*

The law also provides that the county where the crime has been committed shall pay the expense for the medical examination conducted to gather evidence for possible prosecution.

I. *Age of Consent*

The law also reduces the age of consent from 18 to 16.

J. *Resulting Death Defined as Murder*

The new law makes death caused while committing First or Second degree criminal sexual conduct subject to a First degree murder charge (formerly applicable only in the case of rape and sodomy).

NOTE:

On the last day of the 1975 Legislative Session, when the Criminal Sexual Conduct bill was passed, a provision in the bill was deleted that would have repealed a number of statutes that make consensual sex acts criminal. However, not only did the Legislature retain bestiality, fornication, adultery, and consensual sodomy as criminal acts, but also the Legislature retained the old statute on aggravated sodomy, sodomy, and sodomy upon or with a child (Minnesota Statutes Section 609.293). As a result, any act of sodomy that is subject to criminal charges under the old sodomy law is necessarily also subject to criminal charges under either First or Third Degree Criminal Sexual Conduct. It is recommended that prosecutors file a two-count complaint in sodomy cases; for example, Count I, Aggravated Sodomy (the old law), and Count II, Criminal Sexual Conduct in the First Degree or, in the alternative, seek an instruction of First Degree as a lesser included offense. The new evidentiary laws apply to the old statutes that were retained, as well as to the new law.

III. THE COURT PROCESS

The following explanation of the court process is intended for use by:

1) Non-legal personnel, who may be unfamiliar with the process and whose responsibility it may be to prepare and/or support the victim throughout the legal proceedings;
2) Prosecuting attorneys, as a synopsis that can be used to familiarize the victim with the court process and thereby demystify the legal proceedings for which it is essential to gain the victim's cooperation.

There are various levels in the court process that a person passes through before the case gets to trial:

A. *Filing the Complaint (Charges) — Indictment*

Charges may be filed against the suspect by means of either a complaint or an indictment, both of which have the same legal effect, i.e. to institute a prosecution. A complaint is issued under the authority of the county attorney while an indictment is issued by a grand jury. Both set forth the offenses with which the suspect is charged. The victim may be asked to sign the complaint although most complaints are signed by the investigating officer after having been prepared by the county attorney according to the facts presented. The complaint sets out the basic facts of what occurred and how the suspect has been identified as the assailant, while an indictment does not. In the case of an indictment, the victim will be asked to testify before the grand jury.

B. *Initial Court Appearance (Presentment Hearing)*

Soon after arrest and filing of charges, the defendant has an initial appearance in court when bail, if any, will be set, and the defendant is advised of the right to counsel and of the nature of the charges. The court will appoint counsel to represent the defendant if the defendant cannot afford to hire an attorney.

C. *Omnibus Hearing*

The omnibus hearing is usually held in District Court. In some Minnesota counties this hearing may be held before the County Court but the procedure is the same. The purpose of the omnibus hearing is to:

1) Show probable cause that the offenses charged were, in fact, committed;
2) Show probable cause that the suspect charged was, in fact, the assailant; and
3) Determine whether any of the defendant's constitutional rights were violated by reason of a search and seizure, by reason of any statements he/she may have made to the police, or by reason of the identification procedures used in the case, such as a lineup or showing photographs.

When the offense is charged by indictment, probable cause has been found by the grand jury. Therefore, the only purpose of the omnibus hearing under indictment is to determine whether the defendant's constitutional rights have been violated.

The victim may be required to testify under oath before a judge. If the victim's testimony is required he/she will be questioned by both an attorney from the county attorney's office and by the defendant's attorney. Prior to the omnibus hearing the victim will have been interviewed by the county attorney. Testimony will be taken by a court reporter. Probable cause should be established by affidavit, and the prosecutor should avoid testimony by the victim, if possible in that county. However, if the victim must testify at the omnibus hearing he/she should be informed that although this is an opportunity for the defense to explore various ways of proceeding in terms of developing its case, it can also be a good opportunity for the victim to become acquainted with the courtroom atmosphere in order to feel more comfortable at the time of trial. The defendant has the right to waive the omnibus hearing and consideration of the constitutional or probable cause questions. Waiver of the probable cause aspects of the omnibus hearing simply means that the defendant acknowledges that probable cause exists. The defendant does not admit guilt by waiving the omnibus hearing. The purpose of the omnibus hearing is simply to determine whether or not there is probable cause to hold the defendant for trial and to determine whether evidence obtained from the defendant is constitutionally admissible against the defendant at the trial. If the defendant either waives the right to an omnibus hearing or the judge finds that probable cause exists, the defendant will be ordered to stand trial.

D. *Arraignment*

The next step is arraignment at which time the defendant enters a plea of guilty or not guilty. If the defendant pleads guilty and that plea is accepted by the court, the only stage of the criminal process remaining will be the sentencing of the convicted.

E. *Plea Bargaining*

Plea bargaining is an agreement between the prosecution and the defense that recommends a disposition of the case to the court. Usually the defendant agrees to plead guilty to the offense charged or to a lesser charge in order to receive less than the maximum sentence. The judge is not bound by any agreement between the prosecution and the defense but generally will accept the settlement they have agreed upon. If the judge does not accept the plea agreement the defendant has the right to withdraw his guilty plea and stand trial. Plea bargaining may occur any time from the time the crime is reported until the case is submitted to the jury.

F. *Trial*

If the defendant pleads not guilty and there are no successful plea negotiations, the case will go to trial. At trial the State proceeds first with attempting to sustain its burden of proving the defendant committed the act charged beyond any reasonable doubt. In most cases, the prosecution will call as witnesses the victim, the police officers, and anyone who may have seen or heard the incident. The victim will probably be asked to identify the defendant in the courtroom. The victim may also be asked by both prosecution and defense to reconstruct the offense in detail. After the State has rested its case, defense council will be allowed to present its witnesses which may include the defendant. When all the evidence has been presented, the court will instruct the jury as to what the applicable law is that they should use in their deliberations. The jury then retires to the jury room to deliberate and must reach a unanimous decision for a finding of guilty.

G. *Sentencing*

If the defendant is found guilty or pleads guilty, the sentencing process begins. Minnesota Statutes 609.116 and 246.43 require that the court order a presentence investigation prior to sentencing for sex offense convictions. When sentencing, the court could impose a minimum of zero (0) years to a maximum which cannot exceed the statutory maximum for the charge of which the defendant has been convicted. However, offenses which involve the utilization of a dangerous weapon and are so cited statutorily, require the minimum imposition of a three-year sentence. If the defendant is found guilty of more than one count the maximum that could be imposed, although not required, is the maximum of the count which carries the highest penalty. The court also has the discretion to order a stay of execution, stay of imposition, probation, probation with workhouse or county jail time, or conditional probation with treatment. In the case of a negotiated plea where the penalty has also been negotiated, the court will impose the negotiated sentence.

H. *Appeal*

The State is not able to appeal a final verdict of acquittal. Minnesota Statute 632.11 allows the State to appeal only pretrial orders by the court. If the State does make such appeal the door is opened and the defendant is then able to file cross-appeal of pretrial orders, which the defendant ordinarily is not able to do. However, the defendant has a constitutional right to appeal a verdict of guilty for any number of reasons.

IV. PROTOCOL FOR THE PROSECUTION OF SEXUAL ASSAULT CASES

A. *General Principles*

Sexual assault is a traumatic, life-threatening experience for the victim, an act which violates a person's physical and psychological being. Although each victim responds to the sexual assault in a different way, every victim will need the strong support from legal personnel in order to play an effective role in the prosecution of the case. In addition, the victim's emotional adjustment to the sexual assault may be helped or hindered by the quality of his/her contacts with legal personnel.

1. *Concern for the Victim.* Male and/or female members of a prosecutor's office who handle sexual assault cases should possess and display an attitude of sensitivity and concern for the victim. Understanding the victim's feelings and responses to the sexual assault is a key to gaining this sensitivity. (A thorough description of the victim's feelings and responses to the sexual assault is presented in Chapter Three, **Counseling the Victim of Sexual Assault.**)

2. *Rapport with the Victim.* If possible, the prosecutor should enter the case at an early point to develop the needed rapport with the victim. Preferably, the number of different prosecutors dealing with a victim and to whom the victim must relate the incident should be kept to a minimum. Ideally, one prosecutor, assigned to the case at entry, should retain responsibility for the case until final disposition. This enhances the likelihood of rapport with the victim and sound case preparation.

3. *Victim Participation in Decision-Making.* Because the victim of a sexual assault has been through an experience during which the control over his/her life was temporarily in the hands of someone else, it is important throughout the legal process to assist the victim in regaining a sense of control by involving him/her, whenever possible, in the decision-making aspects of the prosecution process (this will be discussed in greater detail under The Victim's Role in the Prosecution, page 97).

4. *The Victim's Right to be Informed.* The victim should be able to obtain information at all times on the status of the legal proceedings, court dates, etc., whether directly from the prosecutor or from an assigned information person in the prosecutor's office. In addition, the prosecutor should act affirmatively in keeping the victim informed of the development of the case.

5. *Advising the Victim of Other Assistance.* The victim should be advised of the Minnesota Crime Victim's Reparation Law (See Appendix B) and, if applicable, the process for applying should be explained. Additionally, legal personnel should be aware of counseling and medical follow-up services available in the community for victims.

B. *Role of the Prosecuting Attorney*

The county attorney, by statutory delegation from the State Legislature, assumes responsibility for the prosecution of felonies and gross misdemeanors on behalf of the State, because a crime against one is a crime against all. Thus, the county attorney will be the prosecuting attorney in sexual assault cases.

1. *Interagency Cooperation.*

   a. *Law Enforcement Agencies.* The county attorney should work closely with local law enforcement personnel to develop guidelines for the investigation, gathering and preservation of evidence necessary for successful prosecution of sexual assault cases. (See Chapter One, **Law Enforcement Investigation of Sexual Assault Crimes.**)

b. *Medical Facilities*. The county attorney should work cooperatively with local medical personnel to develop acceptable court-tested medical protocols for the examination of the victim and collection of extrinsic evidence. Evidentiary tests should be mutually agreed upon, and care should be taken that any hospital lab work is closely coordinated with police laboratories. Also, as is the case with the police, prosecutors should ensure that evidence collected by medical facilities is secured in such a manner as to withstand challenges to its chain of custody. (See Chapter Two, The Medical Treatment of Sexual Assault Victims.)

2. *Relating to the Victim*. The county attorney should *encourage* and *prepare* the victim (complainant) to cooperate and testify, through personal support and explanation of court procedures and legal requirements. This includes interviews before the actual trial as well as those prior to all preliminary proceedings during which the witness is to testify. Preparation not only informs the witness how to respond properly to questions put by counsel, but also helps prepare him/her for this experience, so as to minimize its traumatic effect. A witness, especially the victim, is often frightened, confused, and reticent. He/she probably has never appeared in court before. He/she needs all the comfort, assistance, and concern a prosecutor can provide. Although some prosecutors feel the victim should not be "over-prepared" lest his/her testimony seems artificial and contrived, most agree that the whole court process should be explained, and that the victim should be made to feel he/she is an important part of the system.

3. *Keeping the Victim Informed*. The county attorney should take the responsibility and act affirmatively to keep the victim informed of developments in the case. In addition, the prosecutor may choose to assign an "information person" who could be responsible for:

- Maintaining accurate records of the status of all sexual assault cases.
- Contacting victims and informing them of the progress of their case.
- Answering questions of an informational nature such as court dates.
- Relaying questions of a more personal or evaluative nature to the prosecutor involved.

4. *Facilitating Court Appearances*. Efforts should be made by the county attorney to facilitate court appearances. Some suggestions include:

- Minimizing continuances, and when continuances are sought, providing advance notice to the victim and other witnesses.
- Arranging to have certain witnesses on call, rather than having them wait in the courtroom until the case is called.
- Having a private area or waiting room for the victim to insulate him/her from unnecessary contact with the defendant and/or his/her family or friends.
- Ensuring that the victim knows in advance and has been adequately prepared for each appearance.
- Arranging for a witness support person to accompany the victim to all proceedings, if the victim so chooses.

C. *Role of the Victim Support Person*

It is often desirable to have a support person available to assist the victim and witnesses throughout the court process. In some communitites there are existing crisis centers which provide trained volunteers as victim support persons. In other areas interested persons can be located through volunteer as well as professional service organizations who can then be trained to fill this role. This may be an excellent opportunity to utilize the resources of the community and encourage interested citizens to be active participants in the system.

The victim support person could be of assistance to the prosecutor in the following ways:

- Serving as an information coordinator.
- Serving as a referral source by helping the victim secure follow-up medical treatment, counseling or mental health services, babysitting, and transportation assistance.
- Accompanying the victim and other witnesses to all preliminary proceedings and hearings as well as the trial.
- Accompanying and supporting the victim during any courtroom encounters with the defendant, his/her friends and/or family.

D. *The Victim's Role in the Prosecution*

1. *The Victim as Evidence.* In a purely conceptual sense the complainant in a prosecution for sexual assault is evidence that the crime has occurred and that it was the defendant who committed it. A criminal prosecution is the State's remedy for a crime committed against the laws of the State.

   A person who has been sexually assaulted, however, will more understandably feel that it is he/she, rather than the State, who has been offended. The victim will need to view the criminal justice system as one way he/she can redress this very personal wrong. Hence, the victim has only the criminal justice system through which to vindicate the wrongs perpetrated upon him/her; this road can be tortuous, vexing, embarrassing, and uncertain. Once the court process is begun, the complainant will find the situation out of control in most respects.

2. *Participation in Decision-Making Process.* While the criminal justice system perceives the crime of sexual assault as an act against society and attempts to redress its social wrong, it was, in fact, the victim who was assaulted. Because the victim has a very personal interest in the successful prosecution of the crime, his/her opinion, attitude, and feelings should be considered, whenever possible, in certain aspects of the conduct of the prosecution. This should include the freedom to withdraw from the case if he/she feels he/she cannot withstand the pressures. It would also include participation in decisions concerning acceptance of possible pleas to lesser offenses and sentencing options, whenever possible.

   a. *The Decision to File Charges.* Prosecutors are invested with significant discretion in determining whether or not to file charges and what charges to file against a defendant. Frequently, this decision is based on little more than a pragmatic determination, grounded in experience, that a given case is factually too weak to be worth the effort of trying to obtain a conviction. From the victim's perspective, however, this is commonly perceived as disbelief or lack of concern about the sexual assault.

The decision of whether or not to file charges should be made only after lengthy consultation with the victim, and his/her wishes in this regard should be given real consideration. Prior to any filing the prosecutor, police detective, victim, and witness support person, if any, ought to confer, and the victim should be advised of the nature of the court proceedings to follow, the legal and evidentiary problems raised by the case, the probable areas in which the victim will be cross-examined at trial, and the likelihood of a plea or guilty verdict. The victim should also understand his/her civic duties in cooperating with the law enforcement process. Of equal importance is the responsibility of the prosecutor to so inform the victim of the legal procedures in a manner least likely to discourage or intimidate the victim.

On the basis of this information, the victim is better able to make the decision whether or not he/she wants to go forward. If the victim chooses not to go forward and if no plea can be obtained from the defendant, it may be that the case will have to be dropped. If the victim agrees to go forward with the prosecution, it should be understood that, barring serious unforeseen difficulties, he/she is expected to persevere to disposition. On the other hand, if the prosecution believes for some reason that the case cannot be won and therefore chooses to close the matter, the reason should be absolutely clear to the victim. Clarity is important in order to assure the victim that the validity of his/her statement is not in question.

The initial conference should help both the victim and the prosecution make a better assessment of the fundamental considerations involved in a decision on whether or not to file charges.

b. *The Decision to Withdraw.* The right of a victim to withdraw from the prosecution after commencement may present serious problems. Once the victim has committed himself/herself to the prosecution, it is important to advise him/her that withdrawal is expected only for good cause, such as his/her health and well-being.

c. *Participation in Other Decisions.* Whenever possible, the prosecutor should discuss major decisions affecting the prosecution with the victim. For example, in the case of plea negotiations, the victim should be made aware of the elements of the crime to which the plea is being accepted. The prosecutor should inform the victim that although the case may not be appropriate for criminal prosecution, acceptance of a plea to a lesser charge in no way diminishes the validity of the victim's complaint. Similarly, if a victim is reluctant to go to trial and strongly prefers that the case be disposed of by plea to a lesser offense, his/her preferences should be considered. In addition, the victim should be informed of the sentencing disposition.

3. *The Victim as a Witness.* At all stages of the proceedings and particularly during the victim's testimony:

   a. The absolute and complete truth must be told to the police, the prosecutor, and when testifying. The victim should not be concerned whether something sounds good or bad.

   b. During the testimony, each question asked should be answered completely, but should not go beyond the question asked so as not to be misunderstood.

   c. If a question during testimony is not understood, the victim should ask to have it repeated or rephrased. The victim should be certain to understand the question before trying to answer it.

   d. If an objection is made to any question asked, the person testifying should wait until the judge rules on the objection before answering the question.

   e. The victim's manner of dress and appearance in court may be important. The jury's verdict must be unanimous and if any one juror is offended by the victim's manner of dress, that juror could prevent a conviction no matter how strong the proof against the assailant.

E. *Other Considerations in the Prosecution of Sex Crimes*

1. *Pretrial Preparations.* In preparing for a trial of a sexual assault case it should be kept in mind that, due to mistaken attitudes about sexual assault, some juries still have a tendency to "try" the victim. Although the new Minnesota Criminal Sexual Conduct Law no longer requires corroborating evidence, many juries will not convict without some kind of corroborating testimony. Therefore, in the prosecution of sex crimes, it is more important than ever to establish the credibility of the victim. The case should be assembled with that thought in mind, with each witness corroborating as much as possible the testimony of the victim and underscoring the credibility of the victim.

   a. *Preparing the Victim.* Early contact with the victim is desirable to begin building a relationship to assure full cooperation. A complete explanation of what legal steps will be taken should be given to the victim. Problem areas of the case as well as any questions concerning the victim's personal life that may be asked should be discussed openly with the victim.

      From the very beginning it is important to impress on the victim the importance of telling the complete truth. The tendency to assume guilt for the attack is common in victims of sexual assault and should be kept in mind when interviewing the victim. Sometimes victims will avoid what seems to be a minor point in an effort to appear totally blameless. This is particularly true in instances such as hitchhiking where some sort of consensual act by the victim may be a factor in the sexual assault. If the case is to be presented to the grand jury, it is important that any falsehoods which have been told to the police are discussed and resolved, and that the complete truth is told when the victim is placed under oath. Grand jury transcriptions and testimony of witnesses are discoverable by the defense under the Minnesota Rules of Criminal Procedure (18.05).

Prior to trial the prosecuting attorney should familiarize the victim with the courtroom procedures, take him/her into the courtroom, and discuss the importance of how he/she dresses and appears in the courtroom at the time of trial.

If a victim support person is available he/she could be a valuable liaison between the prosecutor and the victim in helping the victim understand the legal process and the delays which are normal in the criminal justice process. The victim support person could provide information and support that the victim needs at this time.

b. *Preparing Other Witnesses.* One witness who should be interviewed early is the first person to whom the victim spoke after the assault. The conversation the victim had with this person is admissible under the "prompt complaint" theory which is derived from the res gestae principle and is used to corroborate the victim's testimony. If the police report does not indicate the identity of this person, it should be information obtained from the victim at the earliest possible time. This is particularly important if the person is a stranger to the victim. If this witness is a stranger, waiting until a later date may mean that this valuable testimony will not be available at the time of trial.

Other witnesses who can be very useful to the prosecution are those who observed struggling, heard screams or any other events which would indicate lack of consent on the part of the victim. Witnesses who can testify in such a manner as to indicate this lack of consent are particularly important since the defense that the act was consensual is frequently used by counsel for the defendant in sexual assault cases.

If the investigating officer is to testify in court he/she should be interviewed prior to trial by the prosecuting attorney.

Medical evidence is often the only tangible evidence available in a sexual assault case. If the examining physician will be called to testify it is important to interview him/her prior to trial to ascertain his/her ability to interpret the various medical tests which are performed during the examination of the victim. The physician should be prepared to testify from the history which the victim gave at the time of examination in regard to the incident, the victim's appearance, mental or emotional state and the results of any tests which were performed. Minimizing a physician's courtroom involvement will most often result in extremely cooperative efforts by the physician. Physicians almost uniformly have unusually busy schedules and making an effort to accomodate their schedules will facilitate prosecution's efforts.

2. *Physical Evidence.* The county attorney should work closely with local law enforcement and medical facilities to develop guidelines for the gathering and

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preservation of evidence needed for successful prosecution of sexual assault cases. Detailed guidelines indicating the specific evidence to be gathered by law enforcement and medical personnel are contained in Chapter One, **Law Enforcement Investigation of Sexual Assault Crimes**, and Chapter Two, **The Medical Treatment of Sexual Assault Victims**, respectively. The Bureau of Criminal Apprehension Laboratory Capabilities are also presented in these two sections.

In determining the specific evidence to be introduced in the trial of a sex crime the prosecuting attorney should not overlook physical evidence that a jury can touch, hold in their hands, and take back to the jury room with them. The clothing the victim was wearing, photographs of the scene, fingerprints of the assailant, weapons and hair samples are all examples of physical evidence which can be introduced into the trial.

a. If the attack took place in a deserted area, a photograph of the scene can help clarify the scene for the jury as well as establish the lack of consent by showing that the victim had no choice but to submit.

b. If there is a question of identity, fingerprints can be extremely useful. The FBI has recently conducted additional testing of a method of obtaining fingerprints from skin. These fingerprints are developed by a chemical method and can be recovered if the skin of a live victim is treated within an hour and one-half of the incident.*

c. The victim's body and the clothing of the victim will frequently show the presence of seminal fluid. The Bureau of Criminal Apprehension Laboratory has the facilities for testing the clothing of the victim and also any material which might contain traces of seminal fluid. The lab also has the capability of testing hair samples for consistency or inconsistency with the hair of the victim and the assailant. Photographs may also be taken of bruises and lacerations on the body of the victim, perferably in color, and in a manner so that only the affected area is shown.

3. *Depositions*. Depositions in criminal cases could be allowed in the State of Minnesota under *Minnesota Rules of Criminal Procedures, Rule 21*. No prosecutor should allow the deposition of a victim without complete exhaustion of objection and remedies. If the circumstances allowing deposition (*Minnesota Rules of Criminal Procedures, 21.06*) actually exist, the prosecutor should review the case for alternative disposition. The prosecuting attorney should take the time to talk with any persons to be deposed prior to the deposition. The reason for the deposition should be carefully explained to each of them (i.e., deposition used as discovery or for the purpose of impeachment). Before the deposition, the victim should be allowed to refresh his/her memory from statements given to the police at the time of the incident. Section 609.347 provides for in-camera hearings regarding prior sexual conduct of the victim. The prosecutor should attempt to limit the purpose and scope of deposition pursuant to this section.

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*Information on this method can be obtained by contacting: Director of F.B.I., Washington, D.C. 20537, Attention: Latent Fingerprint Section, (202) 324-2163.

4. *Motions in Limine.* An important trial tool for the prosecutor can be a motion in limine. A motion in limine can be used to exclude any mention of the victim's prior sexual conduct on grounds of 609.347 and alert the court to the necessity of an in-camera hearing for such matters. It can limit defense counsel's ability to inquire into areas which can be damaging to the victim's credibility but have no bearing on the issues of the charge. Examples of this may be the presence of venereal disease in the victim, illegitimate children, or an unconventional life-style. Motions in limine should be attempted with extreme care inasmuch as courts are frequently reluctant to make any evidentiary rulings prior to trial.

5. *Admissibility of Other Crimes.* A significant number of defendants may have convictions of a similar offense. This is particularly true in cases involving children. In general, Minnesota law does not allow inquiry into any convictions of crimes unrelated to the current charge unless the defendant testifies, in which case any other prior convictions or evidence of similar conduct may be admissible.

   A line of cases has developed in Minnesota which has allowed the introduction into evidence of crimes or conduct of a similar nature, primarily *State v. Spreigl* and *State v. Billstrom.* The Spreigl case allowed evidence of similar conduct to establish the defendant's identity, state of mind, as well as other characteristics. Evidence of similar conduct need not involve a conviction or even a charge but must be sufficiently clear so that there is no room for speculation in the mind of the jury that the alleged prior misconduct did, in fact, occur.

   The evidence of other conduct is weighed as to its probative value versus the probability of undue prejudice. When defense counsel has interjected reputation-type language or evidence of good character into his/her opening statement, prosecution may successfully argue this fact as a rationale for the evidence being allowed. Despite the problems, the use of such evidence is particularly useful in the prosecution of cases where consent is an issue.

6. *The Trial.* No article can fully convey the "How To" of trying any case, civil or criminal. Trial practice courses in law school give the basics and continuing legal education courses refine them. However, the trial of sex crimes is uniquely different from the trial of other crimes. Most persons have difficulty viewing sex crimes as crimes of violence but tend to interpret them as sexual acts. The following considerations are based on the experience of a number of prosecutors in Minnesota who have prosecuted criminal sexual assault cases and who agree with the generalizations made.

   a. *Jury Selection.* Jury selection should be done with the knowledge that sexual assault usually engenders strong responses in prospective jurors. Due to the many myths about sexual assault many prospective jurors may communicate an attitude of disbelief. The prosecuting attorney should carefully, though indirectly, attempt to determine the attitudes of prospective jurors and select the jury on the basis of their awareness and sensitivity to the problem of sexual assault.

   b. *Opening Statement.* The opening statement should be used to give all the facts of the case to the jury. Some prosecuting attorneys prefer vague opening statements as a defense against changes in witness testimony.

c. *Use of Witnesses in Trial.* The victim of the crime is usually the first witness called. Taking time to talk with him/her in advance of the trial, explaining the courtroom procedure, and showing him/her the courtroom is important both for the case and for the victim's well-being. Since it is probable that the victim will not have seen the defendant since the attack he/she should be prepared to identify the defendant in the courtroom. Ask the victim to point out the defendant in a positive and forceful manner so the jury will not doubt him/her. Questions to the victim which elicit the fear, terror, and humiliation which most victims experience during the sexual assault will help the jury experience these emotions with him/her.

   In general, the victim should not remain in the courtroom after testifying. His/her presence may be distracting to the jury and hearing the testimony of other witnesses may be distressing to the victim. His/her presence may also lead the jury to believe the trial is a personal vendetta rather than a criminal case. Care should be taken in argument to stress that the victim is a witness to a crime and the State is the plaintiff, not the victim.

   Presenting other witnesses in chronological order, although not required, makes the case easier for the jury to follow. If damaging statements were made by the defendant, the officer who took them should be presented as the final witness. A strong finish is always preferable, especially if no defense is presented.

d. *Closing Argument.* The closing argument should begin with the first witness. It is important to decide the theory of the case early and keep it uppermost in the mind as the case is presented, filling it out with the responses of the witnesses. The theory and the answers of the witnesses will make up the argument. Defense counsel's arguments should not be anticipated in the prosecuting attorney's argument. Something which seems an obvious defense argument may not be so obvious to that person.

   When the victim has not been physically injured, juries often have a difficult time seeing a sexual assault as a violent crime. Arguments which stress the criminal acts, the victim's lack of choice, and the continuing fear experienced by the victim should be used.

   The explanation of the jury instructions should not be overlooked during the closing argument. Correlating the facts of the case with the jury instructions helps jurors put them in the proper perspective. If there are lesser and included offenses, they should be explained from the lowest to the highest with appropriate facts to support the verdicts. The explanation should be ended with a call for a verdict of the highest offense.

7. *Jury Instructions.* Minnesota's new Criminal Sexual Conduct Law (Minnesota Statutes Sections 609.341-609.351) ***absolutely precludes*** the use of the following jury instructions:

a) It may be inferred that a complainant who has previously consented to sexual intercourse with persons other than the defendant would be therefore more likely to consent to sexual intercourse again; or
b) The complainant's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the complainant; or
c) Criminal sexual conduct is a crime easily charged by a complainant but very difficult to disprove by a defendant because of the heinous nature of the crime; or
d) The jury should scrutinize the testimony of the complainant any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

The prosecution's jury instructions can, in most instances, be quoted directly from the new statute. The applicable degree of criminal sexual conduct and the attendant definition in the statute should be set forth in the instructions. If there is more than one count of criminal sexual conduct charged, it is advisable that the definition for each count be included in the jury instructions by the prosecutor.

APPENDIX

CHAPTER FOUR

APPENDIX FOUR-A

FIRST REGULAR SESSION *Ch. 374* **69 TH LEGISLATURE**

Sex Crimes
Chapter 374
H. F. No. 654
(CODED IN PART)

An Act relating to crimes; specifying the acts constituting sexual offenses; admissibility of evidence in sex offense prosecutions; providing penalties; amending Minnesota Statutes 1974, Section 609.185; and Chapter 609, by adding sections; repealing Minnesota Statutes 1974, Sections 609.29; 609.291; 609.292; 609.295; and 609.296.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statues 1974, Section 609.185, is amended to read: **609.185 Murder in the first degree.**

Whoever does either of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life:

(1) Causes the death of a human being with premeditation and with intent to effect the death of such person or of another; or

(2) Causes the death of a human being while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence, either upon or affecting such person or another.

Sec. 2. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.341 Definitions

Subdivision 1. For the purpose of sections 609.341 to 609.351, the terms in this section have the meanings given them.

Subd. 2. "Actor" means a person accused of criminal sexual conduct.

Subd. 3. "Force" means commission or threat by the actor of an assault, as defined in section 609.22, or commission or threat of any other crime by the actor against the complainant or another, which causes the complainant to reasonably believe that the actor has the present ability to execute the threat, and also causes the complainant to submit.

Subd. 4. "Consent" means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act.

Subd. 5. "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his conduct.

Subd. 7. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct due to the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his agreement, or due to any other act committed upon that person without his agreement.

Subd. 8. "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to act and the condition is known or reasonably should have been known to the actor.

Subd. 10. "Positon of authority" includes but is not limited to any person acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

Subd. 11. "Sexual contact" includes any of the following acts committed without the complainant's consent, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual or aggressive impulses, except in those cases where consent is not a defense:

(i) The intentional touching by the actor of the complainant's intimate parts, or

(ii) The coerced touching by the complainant of the actor's, the complainant's, or another's intimate parts, or

(iii) The coerced touching by another of the complainant's intimate parts, or

(iv) In any of the cases above, of the clothing covering the immediate area of the intimate parts.

Subd. 12. "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant's body of any part of the actor's body or any object used by the actor for this purpose, where the act is committed without the complainant's consent, except in those cases where consent is not a defense. Emission of semen is not necessary.

Subd. 13. "Complainant" means a person alleging to have been subjected to criminal sexual conduct.

Sec. 3. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.342 Criminal sexual conduct in the first degree

A person is guilty of criminal sexual conduct in the first degree and may be sentenced to imprisonment for not more than 20 years, if he engages in sexual penetration with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to coerce the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threaten to use the weapon or article to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:
(i) The actor uses force or coercion to accomplish sexual penetration; or
(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or
(f) The actor is aided or abetted by one or more accomplices within the meaning or section 609.05, and either of the following circumstances exists:
(i) An accomplice uses force or coercion to cause the complainant to submit: or
(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit.

Sec. 4. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.343 Criminal sexual conduct in the second degree

A person is guilty of criminal sexual conduct in the second degree and may be sentenced to imprisonment for not more than 15 years if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant, and uses this authority to coerce the complainant to submit. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(c) Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; or

(d) The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit; or

(e) The actor causes personal injury to the complainant, and either of the following circumstances exist:
(i) The actor uses force or coercion to accomplish the sexual contact; or
(ii) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless; or
(f) The actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:
(i) An accomplice uses force or coercion to cause the complainant to submit; or
(ii) An accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit.

Sec. 5. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.344 Criminal sexual conduct in the third degree

A person is guilty of criminal sexual conduct in the third degree and may be sentenced to imprisonment for not more than ten years, if he engages in sexual penetration with another person and any of the following circumstances exists:
(a) The complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant and not in a position of authority over the complainant. In any such case it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor believes the complainant to be 16 years of age or older. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, he may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense; or

(c) The actor uses force or coercion to accomplish the penetration; or

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless.

Sec. 6. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.345 Criminal sexual conduct in the fourth degree

A person is guilty of criminal sexual conduct in the fourth degree and may be sentenced to imprisonment for not more than five years, if he engages in sexual contact with another person and if any of the following circumstances exists:

(a) The complainant is under 13 years of age and the actor is ~~no less~~ more* than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense; or

(b) The complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant and uses this authority to coerce the complainant to submit. In any such case, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older; or

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*Amended H.F. No. 910, Section 9, 1976.

(c) The actor uses force or coercion to accomplish the sexual contact; or

(d) The actor knows or has reason to know that the complainant is mentally defective, mentally incapacitated, or physically helpless.

Sec. 7. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.346 Subsequent offenses

Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.346 within 15 years of the prior conviction, the court shall commit the defendant to the commissioner of corrections for imprisonment for a term of not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted; provided, however, that the court may invoke the provisions of section 609.135, if a specific condition of the probationary term under section 609.135 includes the successful completion of a treatment program for anti-social sexual behavior, and such person shall not be eligible for parole from imprisonment until he shall either have served the full minimum sentence herein provided, or until he shall have successfully completed a treatment program for anti-social sexual behavior as herein provided notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

Subd. 2. For the purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has been at any time convicted under sections 609.342 to 609.346 or under any similar statute of the United States, or this or any other state.

Sec. 8. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.347 Evidence

Subdivision 1. In a prosecution under sections 609.342 to 609.346, the testimony of a complainant need not be corroborated.

Subd. 2. In a prosecution under sections 609.342 to 609.346, there is no need to show that the complainant resisted the actor.

Subd. 3. In a prosecution under sections 609.342 to 609.346, evidence of the complainant's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4, and only to the extent that the court finds that any of the following proposed evidence is material to the fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) When consent or fabrication by the complainant is the defense in the case, evidence of such conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue on the part of the complainant, relevant and material to the issue of consent or fabrication. Evidence of such conduct engaged in more than one year prior to the date of alleged offense is inadmissible;

(b) Evidence of specific instances of sexual activity showing the source of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial;

(c) Evidence of the complainant's past sexual conduct with the defendant;

(d) For purposes of impeachment, when such evidence is offered to rebut specific testimony of the complainant.

Subd. 4 The defendant may not offer evidence described in subdivision 3 except pursuant to the following procedure:

(a) A motion shall be made by the defendant prior to trial, unless later for good cause shown, stating to the court and prosecutor that the defendant has an offer of proof of the relevancy of the evidence of the sexual conduct of the complainant which is proposed to be presented;

(b) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the defendant to make a full presentation of his offer of proof;

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the sexual conduct of the complainant is relevant and material to the fact of consent, and is not so prejudicial as to be inadmissible, the court shall make an order stating the extent to which evidence is admissible under subdivision 3 and prescribing the nature of questions to be permitted at trial. The defendant may then offer evidence pursuant to the order of the court;

(d) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in subdivision 3 admissible, the defendant shall make the disclosures under clause (a) of this subdivision and the court shall order an in camera hearing to determine whether the proposed evidence is admissible by the standards herein.

Subd. 5. In a prosecution under sections 609.342 to 609.346, the court shall not instruct the jury to the effect that:

(a) It may be inferred that a complainant who has previously consented to sexual intercourse with persons other than the defendant would be therefore more likely to consent to sexual intercourse again; or

(b) The complainant's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the complainant; or

(c) Criminal sexual conduct is a crime easily charged by a complainant but very difficult to disprove by a defendant because of the heinous nature of the crime; or

(d) The jury should scrutinize the testimony of the complainant any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

Sec. 9. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.348

Laws 1975, Chapter 374 shall not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

Sec. 10. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.349

A person does not commit criminal sexual conduct under Laws 1975, Chapter 374 if the actor and complainant were adults cohabiting in an ongoing voluntary sexual relationship at the time of the alleged offense, or if the complainant is the actor's legal spouse, unless the couple is living apart and one of them has filed for separate maintenance or dissolution of the marriage. Nothing in this section shall be construed to prohibit or restrain the prosecution for any other offense committed by any person against his legal spouse.

Sec. 11. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.35 Costs of medical examination

No costs incurred by a county, city, or private hospital or other emergency medical facility or by a private physician for the examination of a complainant of criminal sexual conduct, when the examination is performed for the purpose of gathering evidence for possible prosecution, shall be charged directly or indirectly to the complainant. The reasonable costs of such examination shall be paid by the county in which the alleged offense was committed. Nothing in this section shall be construed to limit the duties, responsibilities, or liabilities of any insurer, whether public or private.

Sec. 12. Minnesota Statutes 1974, Chapter 609, is amended by adding a section to read:

609.351 Applicability to past and present prosecutions

Except for section 609.347, crimes committed prior to August 1, 1975, are not affected by its provisions.

Sec. 13. Minnesota Statutes 1974, Sections 609.29; 609.291; 609.292; 609.295; and 609.296 are repealed.

Approved June 5, 1975.

APPENDIX FOUR-B

The Minnesota Crime Victims Reparations Law (Minnesota Statutes 299B.01 - 2990.16)

Purpose

To provide innocent victims of violent crime with compensation for loss of earning or support and out-of-pocket loss for injuries sustained as a direct result of a crime committed against their person. Out-of-pocket loss means reasonable medical care or other services necessary as a result of injury. In the event of the death of the victim, reasonable medical care plus reasonable expenses incurred by a legal representative of deceased for funeral, burial or cremation.

How much can a victim recover?

Up to a maximum of $10,000. There is a $100 deductible and further deductions for amounts received or to be received as a result of the injury:

(a) From or on behalf of the offender.
(b) Under insurance programs of any kind — Blue Cross/Blue Shield, Group Health, Workmen's Compensation, loss of wage insurance, etc. (except life insurance contracts).
(c) From public (city, county, state, or federal) funds.

Who is eligible?

An innocent victim of a violent crime against his or her person. A dependent or legal representative of an innocent victim who has met death as a result of a violent crime.

What must a victim do to be eligible for reparations?

1. Must report crime to law enforcement agency where crime was committed within five days of the event. If crime could not be reasonably reported within five days of its occurrence, then within five days of the time when a report could reasonably have been made.
2. Must be completely cooperative with the law enforcement agency.
3. Must be an *innocent* victim of crime.
4. Must file a Preliminary Claim Form with Crime Victims Reparations Board within *one year* of the happening of the event.

Victims of sexual assault may receive reparations for:

Ecomonic loss which means actual economic detriment incurred as a direct result of injury or death:

(a) In the case of injury the term is limited to:

  (i) Reasonable expenses incurred for necessary medical, chiropractic, hospital, rehabilitative, and dental products, services, or accommodations including ambulance services, drugs, appliances, and prosthetic devices.
  (ii) Reasonable expenses incurred for psychological or psychiatric products, services or accommodations where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim.
  (iii) Loss if income the victim would have earned had he not been injured.
  (iv) Reasonable expenses incurred for substitute child care or household services to replace those the victim would have performed had he/she not been injured.

(b) In the case of death the term is limited to:

  (i) Reasonable expenses incurred for funeral, burial, or cremation.
  (ii) Reasonable expenses for medical, chiropractic, hospital, rehabilitative, psychological, and psychiatric products, services or accommodations which were incurred prior to the victim's death or for which the victim's survivors or estate are liable.
  (iii) Loss of support including contributions of money, products, or goods but excluding services which the victim would have supplied to his dependents if he/she had lived.
  (iv) Reasonable expenses incurred for substitute child care and household services to replace those which the victim would have performed for the benefit of his/her dependents if he or she had lived (injury is defined as actual bodily harm including pregnancy, and mental or nervous shock).

To recover reparations:

File a Preliminary Claim Form with the Victim's Reparations Board. Forms can be obtained from your local law enforcement agency or by writing to the Crime Victims Reparations Board, 504 No. Rice Street, St. Paul, Minnesota 55103 or calling (612) 296-7080.

CHAPTER FIVE

THE CHILD AS VICTIM

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THE CHILD AS VICTIM

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THE CHILD AS VICTIM

I. INTRODUCTION

The sexual abuse of children includes sexual assault by someone within the victim's family (incest) as well as sexual assault by someone outside the victim's family. Because the needs of the child victim of sexual assault are so uniquely different from those of the adult victim, special procedures for working with child victims need to be developed by police, hospital, legal and social service agencies.

Developing a comprehensive recommended protocol for working with the child as victim is a major effort in itself, yet to be undertaken. Unlike the four preceding chapters of this manual, the information provided in this chapter is a compilation of materials available relative to the sexual abuse of children, but in no way intends to be a comprehensive recommended protocol.

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*Interviewing the Child Sex Victim**

In interviewing a child sex victim, the police officer must establish the elements of the offense without causing the victim, who is likely to be confused and frightened, unnecessary anguish. Frequently, the emotional reactions of the parents and problems of communication between the officer and the child complicate the interview process. Throughout the interview, the police officer should exercise tact, compassion, and patience, keeping the welfare of the child first in his mind.

Although one researcher has estimated that more than one million American children are sexually assaulted each year,[1] very few of these cases are brought to the attention of the police. The primary reason that child sexual abuse is a vastly underreported crime is that frequently the victim and the offender are related. Family members may not report such sex crimes because of personal shame, misguided loyalty, fear of public exposure and embarrassment, or outright complicity. The child may not relate the abuse to anyone because she is naively obedient, fears retaliation, does not want to hurt the family, or is unaware that an offense has been committed.

Because of these factors, a great majority of incidents involving family members do not surface rapidly, if at all. Often, such cases of abuse represent long periods of chronic adult-child sexual activity, in which the child maintains genuine affection for the offender although she may have negative feelings about the sex acts. Some children may be active participants in sexual relations because of their need and desire for adult or parental affection and attention.

Child assaults committed by strangers are much more likely to be reported to the police. But even here, underreporting is prevalent because children often have difficulty in understanding and relating unusual experiences. Since the assault complaint is typically registered by the parents, they must first understand and believe the child's account.

The one background factor that seems common in cases of child sexual abuse is that the victims often come from a disorganized family. A recent study[2] concluded that the great majority of sexual offenses occurred as a result of parental negligence. Three conditions of negligence were found to be typically involved: the daughter was left unprotected even though the parent knew she was in danger, the parent refused to listen to the child's story that she had been attacked or was in danger, or the parent was aware of the attack but took no positive action because a family member was the offender.

The study also showed that 33 percent of the child victims were from one-parent homes, and another 14 percent were from families where the parents were not legally married. Many of the children studied were victimized by members of their own family. For example, the report indicated that the girls between the ages of 6 and 15 were one and a half times more likely to be assaulted by a household member or blood relative than by a stranger.[3]

Underreporting is not the only obstacle that the police face in dealing with child sex victims. Even when such assaults are reported, there frequently is a substantial time lag between the occurrence of the incident and the notification of the police. Many times the parent does not learn about the attack immediately because the child "forgets" to mention it. The victim may not think to mention the incident until something triggers her memory of it. For example, while being bathed, a young girl may remember the assault and tell her mother that someone had kissed or touched her. Police officers need to realize that a late report is often caused by the child's limitations in remembering and communicating experience. On the other hand, the longer the time period between the attack and the official reporting of it, the more difficult it is to investigate the case.

After the attack has been reported, police involvement in the case usually begins with the interview of the child. Interviewing a child is different from interviewing an adult, where both the officer and the victim are at least assured of "speaking the same language." The officer has to use special skills in conducting a successful interview of a child sex victim. He needs to have an insight into how children perceive and relate events, and he must have some understanding of the psychological reactions of the child and the parents to the incident.

Psychological Reactions

In cases of child sexual abuse, the police officer must consider carefully the emotional condition of the victim and her parents. An understanding of the various psychological reactions of the parents and child helps the office to avoid causing unnecessary anguish and creates an atmosphere of trust and support, in which the investigative process, especially the initial interview, can proceed smoothly.

PARENTS: Child molestation is an offense where the emotions of the parents or guardians may be more complex and explosive than the psychological reactions of the victim. Because the child's emotional condition and attitude toward the police will likely reflect her parents' state, it is often necessary for the officer to consider the parents' reaction, if they are not involved in the offense, before concentrating on the victim.

Although parental reactions vary, there are typical emotional conditions for which the police officer can be prepared. Perhaps most common is the grief reaction, a combination of fear, anger, and sorrow. Here, the police officer should allow the parents to express or "ventilate" their feelings. After they have relieved some of their emotional tension, the officer should try to further calm the parents, assuring them that the child is safe and everything during the investigation will be carried out in her best interest.

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*Reprinted from Training Key #224 with the permission of the International Association of Chiefs of Police.

[1] Leroy G. Schultz. "Child Sex Victim: Social, Psychological and Legal Perspectives." *Child Welfare*, 1973, p. 147.

[2] Vincent DeFrances. *Protecting the Child Victim of Sex Crimes Committed by Adults.* American Humane Association, Denver, Colorado, 1969.

[3] *Ibid.* p. viii.

Parents of child sex victims frequently experience feelings of extreme guilt. They blame themselves for "allowing" the assault to occur. Such expressions of guilt generally start with the word if — "if only I had moved to another neighborhood" or "if only I hadn't gone to the store." Where appropriate, the police officer should assure them that they have been responsible parents and that the only guilty party is the offender.

Sometimes the parents' guilt will be directed toward the child in the form of verbal abuse. The parents will blame the child for her misfortune. When this occurs, the police officer should separate the child from the parents and explain to them that their behavior will adversely affect the child's present condition and future recovery. Explanations such as these should be delivered tactfully, for the success of the interview and the well-being of the victim depend greatly on the rapport established between the police and the parents.

If one parent is the offender and the other parent's guilt is justified — for example, when a mother has known for some time about relations between her husband and daughter — the officer should acknowledge the mother's feelings but not criticize her behavior. Antagonizing the mother will only make interviewing the child a more difficult task.

CHILD: Many factors influence the emotional reactions that child sex victims experience. The age, level of physical and emotional development, understanding of sex, family stability, brutality of the attack, and the relationship between the victim and the offender must be taken into account, especially when trying to speculate about the long-range impact of the incident on the child's emotional health. The immediate goal of the police officer, however, is to calm and protect the victim from further emotional damage while carrying out the investigative interview.

The child may exhibit fear, embarrassment, guilt, or confusion. Emotional shock, manifested by crying, shaking, and restlessness, is a reaction that police officers frequently encounter. In such cases, the officer and the parents must comfort the child until her sense of well-being is restored.

Withdrawal is another common psychological reaction in these situations. The child may refuse to converse with the officer or to become involved in the interview in any other way. Embarrassment, a desire to forget the incident, or unfamiliarity with the interview surroundings and procedures may be at the root of this feeling. Patience and understanding on the part of the police officer will help the victim overcome these inhibiting fears.

When the offender is a family member or brutality is involved, the child may "repress" the incident and not be emotionally capable of discussing it. Repression is sometimes called "active forgetting" in that individuals will not allow themselves to remember unpleasant experiences. All that the police officer can do in this situation is to make the victim feel comfortable and secure and explain the importance of the interview in the hope that she will respond positively.

Particularly among older children, there may be guilt feelings associated with the assault. The child may feel that she somehow provoked the attack by her behavior. The guilt association may be quite childish: for example, the victim accepted candy or a ride from a stranger and then was "punished" for doing what her parents constantly warned her not to do. Or the victim's guilt may take a more adult form, such as wondering whether her own sexuality somehow enticed the offender. In any case, the police officer must make it completely clear that the child was not at fault and should not in any way hold herself responsible for what occurred.

Younger children may be genuinely confused about the attack. The victim may know that something unusual occurred but not that something "bad" or significant took place. Here, the police officer should try to get the facts of the case without alerting the child to the seriousness of the attack. So long as the child looks upon the incident as only an "unusual" event, her chances of a complete emotional recovery are very good.

The concept of "protection through innocence" should be recognized by police officers. The premise of the concept is that the young child, because of her lack of awareness of the social taboos violated, will not suffer a long-lasting emotional disturbance from a sexual assault. Although all child sex victims probably experience some degree of short-term psychological stress, most will not suffer from long-range emotional problems unless they are adversely affected by the reactions of adults.

The Interview

The interview of any victim of a sex crime is demanding work. The interviewing officer must obtain information from a victim who typically finds it difficult and unpleasant to recount the personal aspects of the crime. If the police officer does not exercise tact and compassion, not only does the interview fail as an investigative process, but also the victim may unnecessarily suffer emotionally. Although interviewing an adult victim is difficult, the interview of a child is more so. Problems of communication and identification between an adult officer and a child victim must be overcome. The task becomes even more complicated when the offender is related to the victim. When the officer is confronted with both problems in interviewing a child victim of a sexual assault, the difficulty is compounded and special attention is required.

TIMING: The interview should take place as soon as possible after the incident is reported. The longer the time interval between the assault and the interview, the less able the child is to recall the attack and relate the details. The welfare of the child cannot, however, be sacrificed for investigative expediency. Since extensive questioning by more than one officer can cause the victim emotional trauma, it should be avoided when possible. However, detailed questioning by the officer responsible for the initial interview is, however, necessary to establish whether a crime was committed and to obtain the identity or description of the suspect. The following procedures should, therefore, be applied during both the preliminary and in-depth interviews.

SETTING: The in-depth interview of the victim should not take place until after the child has been medically examined and treated and other physical needs have been met. Personal needs often include washing and changing clothing.

The interview should take place in a comfortable setting where the child feels secure. The setting should provide privacy. Places that are not free from interruptions, distraction, and noise are inappropriate for effective interviewing. A preferred location is the child's home, so long as it is not the site of the attack. It is familiar to the child and will provide the needed privacy. If an office is used, the officer should ensure that it meets basic requirements of the interview setting, and he should permit the child to become familiar with it before starting the interview.

It is often desirable that a female police officer conduct the interview of a child sex victim. This will depend on the age, sex, and feelings of the victim. In many cases, though, a policewoman will not be available. At these times, the officer should consider using the presence of a female nurse or social worker to facilitate the interview process. Although the nurse or social worker will not participate in the actual interview, her mere presence may be comforting to the child.

PARENTS AS OBSERVERS: When one of the victim's parents is the suspected offender, it is usually most productive to interview the child without either parent being present. In these cases the child probably will be hesitant to discuss the attack if family members participate in or observe the interview.

Where a parent is not the perpetrator, the police officer should explain to the child's parents the purpose and structure of the questioning before the interview begins. The officer's attitude must convey a sympathetic understanding of the parents' position, and their cooperation should be openly solicited. Experience has shown that a child's initial reaction to an interview is influenced greatly by the attitude of the parents. When the parents feel secure and display cooperativeness, the child will likely behave in the same way.

Whether the parents should be present during the interview depends entirely on the specific circumstances of the case. Some children will be frightened and uncommunicative if their parents are not present; others will be reluctant to discuss the matter in front of their family. Generally, if the child requests that her parents be present, her wish should be complied with. The parents can be seated behind the child so that they do not interfere with the questioning. When the child does not want her parents present, they may be seated outside the room where they can observe but not overhear the victim. An interview room equipped with a two-way mirror can fulfill this requirement. In all cases, the interviewing officer will have to judge what arrangement is best, keeping the welfare of the victim uppermost in his mind.

RAPPORT: One of the most important elements of the interview is the officer's ability to establish a rapport with the victim. An effective means of accomplishing this is for the officer to question the child about herself. Most children like to talk about themselves. Questions concerning the child's hobbies, school friends, and activities will show the child that the officer is interested in her as a person. In this way, an informal and friendly relationship between the two can be developed, and, in addition, the child will become accustomed to answering personal questions. Once rapport is established, the officer should be able to smoothly lead into discussion of the assault.

OBTAINING THE STATEMENT: As when interviewing an adult victim, the police officer should let the child describe the incident in her own words and should not ask detailed questions until the victim's statement is complete. The officer should listen attentively and encourage conversation with supporting gestures and comments. By nodding his head, the officer lets the child know that he is listening and understands what she is saying. Another way to encourage conversation is to repeat key words and the last word or statement that the child has made. Expressions such as "you feel that," "you are saying that," and "what you are trying to tell me" also help to draw out information.

The language the officer uses must suit the age and level of development of the child being interviewed. It is important that the officer stay on the child's level and phrase his questions in a language that the victim understands. Young children usually do not know the correct words for various parts of the body, especially sexual organs. When referring to some parts of the body, for example, children often use nicknames. The officer should ask the parents for the meanings of these nicknames and his report should reflect the terms used by the child and include the meaning attached to them by the victim. With older children, the officer's choice and manner of language will often be that of an adult. When talking to adults about sexual relationships, adolescents typically use formal terms. Adolescent girls, for instance, prefer formal language to child or street talk when discussing the topic of sex because it is less likely to embarrass them.

Because the purpose of the interview is to determine the facts of the crime, the police officer must question the victim about the details of the assault. Some details are not common knowledge among children, and they frequently cannot describe sexual activities in a vivid way. In addition, children sometimes find it difficult to distinguish between what actually happened and what they imagined to have occurred. This is especially true when the experience is a very emotional one. In overcoming these interview obstacles, the police officer relies on past experience, exercises patience, and seeks the advice of the victim's parents.

VICTIM EVALUATION: During the interview, the police officer has to establish the potential of the child as a credible witness as well as determine the truthfulness of the child's statement. This evaluation is aimed at two characteristics of the victim: her ability to accurately relate the event and to distinguish between fantasy and truth.

The child's capacity to recall and relate information can be tested by asking her personal questions. Information should be solicited from her about family life, friends, school, and other interests. General questions about the community in which she lives, such as church and recreational activities, also help to determine her level of intellectual development. The child's replies to these questions not only help in evaluating the child's ability, but also the discussion serves as a means of fostering a rapport.

The victim's ability to tell time is often a crucial factor in establishing when the attack occurred. Questions about the hours and days of the week the child attends school will aid in this evaluation. There are other routine functions in the child's life which the officer can use to determine the time of the offense including television schedule, eating habits, and daylight and nighttime activities.

Whether the child can differentiate between the truth and a lie needs to be assessed by the interviewing officer. The officer should ask the victim if she knows the difference between the two and what happens when she tells a lie. The victim's answer may be expressed in child terms, but the important thing is her attitude. She should consider telling the truth as being positive and telling a lie as being negative. If there is a need, the police officer can verify the child's reputation for honesty by talking with the parents, teachers, friends and parents of friends.

The child's ability to distinguish between fantasy and reality must also be established. If the victim's account seems improbable, overly imaginative, or exaggerated, the police officer may have to probe into her background to determine whether she often confuses real events with those imagined.

ENDING THE INTERVIEW: The police officer should never end an interview abruptly. When he has obtained all of the facts about the incident, the officer should ask the child whether there is anything else she wishes to say. The child should be told that, if she remembers anything else about the assault, she should tell her parents. If the child is old enough to understand, the officer can explain the investigative steps to be followed.

The police officer should explain to the parents that the child may have to repeat her story to others, including the prosecutor, as well as testify in court. The parents should also be told that, if the case goes to trial, the police will help prepare the child for the courtroom hearing so that the experience will not be emotionally traumatic.

The parents should be cautioned against questioning the child about the incident. The less the child has to think about the assault, the faster her emotional recovery will probably take place. If the child wants to discuss the matter, however, the parents should be advised to talk about it frankly and without embarrassment.

Sometimes child sex victims and their families experience long-range emotional difficulties. Depending on the circumstances, the police officer may suggest that they seek the help of an appropriate social service agency, family physician, psychologist, or clergyman.

Preparing the Child for Court

When the investigation of a child sex offense ends successfully and a trial is scheduled, the police should begin to prepare the child for court. The officer should explain to the child courtroom procedures and the roles of the judge, jury, prosecutor, and defense attorney. This explanation must be in such a manner that the child understands it. Where possible, the officer and the prosecutor should familiarize the child with the courtroom. She should be taken to the courtroom and allowed to sit in the judge's chair, at the attorney's table, and in the witness chair. The victim should also be familiar with where she and her parents will be sitting. By acquainting the victim with the legal proceedings, the officer accomplishes two goals. He makes the child a better witness by reinforcing her self-confidence and makes the courtroom experience less mysterious and frightening.

Summary

For a variety of reasons, sexual crimes against children often go unreported. When a case of child molestation is brought to the attention of the police, the interviewing officer is responsible for obtaining the facts so that a proper investigation of the matter can be conducted. But interviewing a child sex victim is a very difficult and delicate assignment. The officer must consider the psychological condition of the victim and her family, gain the cooperation of the parents, and question the victim without causing her additional emotional problems. He must evaluate the victim in terms of her potential as a witness, and, if the case goes to court, the officer must prepare her for the trial.

PROTOCOL FOR EXAMINATION OF CHILDREN FOLLOWING SEXUAL ASSAULT*

I. GENERAL GUIDELINES

In order to facilitate the care of the patient-victim and to provide for empathic on-going support, the registered nurse has been designated as the primary care department staff member.

In practical terms, this means that nurses will be responsible for guiding the victim through the system as follows:

A. A nurse will meet the patient-victim at the registration desk, introduce herself and escort the patient to an examining area *where the victim will be registered.* Every effort should be made to provide a room as soon as possible.

B. If the patient is accompanied by a police officer, many of the necessary details can be obtained from him. The staff should encourage (not force) the child victim to express his/her feelings about the incident. The nurse and doctor should record in the third person i.e. "He said . . . She said . . ." as they document the report of their interaction with the child. (Ordinarily, hearsay testimony is not accepted in court, but in the case of sexual assault there is a specific exception to the hearsay rule. Those individuals to whom the victim speaks about the incident shortly after it happens will be able to relate the conversation in courtroom testimony. The importance of this evidence cannot be overestimated. The additional details which must be gathered by the nurse will be elicited in the course of the history taking.

C. In addition to explaining the procedures which are part of the nurse's examination, she should also explain in general what will be done in terms of the physician's exam (answering any questions which the patient may raise).

D. If the patient-victim is a minor, the nurse should, through conversation with the *patient-victim,* determine whether it is advisable to have a parent present during the exam and communicate that information to the physician. Parents need not be contacted if the patient is old enough to understand (sixteen and older if of normal intelligence). Parents of children under sixteen years of age will be contacted unless contraindicated.

E. To insure the continuity which seems to provide support for the patient-victim, it is essential that as few staff members as possible be involved. The R.N. should make every effort to be with the patient as much of the time as possible. If she has to leave the area, she should introduce a staff nurse to the patient-victim and that nurse will be responsible during her absence. If she must leave the patient alone, she should explain the reason for her absence to the patient.

F. It is also important for the nurse to *monitor* the identification of lab and police specimens for legibility and completeness.

G. In summary, the nursing staff should deal empathically and responsibly with the patient-victim during the entire time the victim is in the department. At discharge, the victim is to be given the follow-up sheet and its contents explained as needed.

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II. CARE OF THE CHILD

The emotional difficulty accompanying sexual molestation can be increased by the insensitive imposition of adult standards. The protection of the child is an important duty of the hospital staff. Psychosexual trauma must be recognized and minimized. Emotional support and gentle sympathetic understanding of both child and family are important; therefore TACT and KINDNESS are imperative. Parents should be given reassurance and guidance and warned specifically against magnifying the situation. Avoid such terms as "ruined," "violated," "dirty," or "lost her innocence" lest the child develop severe guilt feelings and anxiety.

III. PRIVACY

A. Assault victims are priority patients — escort them immediately to a private exam room. A primary nurse will accompany child as much as possible.

B. The child who has recently experienced potentially traumatic episodes must be protected from police, curious onlookers, and others who may be insensitive to the child's feelings.

C. Therefore, it may be necessary to separate the child from his parent at the discretion of the professional who has considered the child's wishes and rights.

D. If the history is taken with parents present it should be repeated with the parent absent to substantiate the facts. A girl who has had intercourse and is afraid that she is pregnant, for example, may tell a parent that she has been raped.

IV. OBJECTIVES

A. To give care for injuries.

B. To prevent future psychological damage.

C. To minimize stress.

D. To evaluate pregnancy possibilities.

E. To prevent venereal disease.

F. To maintain a medical-legal record.

G. To initiate follow-up health care.

V. PREPARATION OF THE CHILD/FAMILY

A. The nurse will discuss the objectives of treatment with the child/family in private *before* any procedure (including undressing the child) is begun. Stress the importance of recording and reporting the incident to the police and request permission to contact them immediately for their cooperation.

B. If permission for reporting the incident to the police is granted, the nurse will obtain written consent for examination and release of medical information; and instruct the secretary to notify the police.

C. Via telephone:

   1. Explain the importance of reporting the incident.

   2. Instruct family not to bathe or undress the child/victim before coming into the hospital to be examined.

D. Stress that this written consent does not obligate the victim to prosecute the assailant. The exam will enable collection of evidence which will be used if the child/family wish to prosecute the assailant at a later date.

VI. NURSING RESPONSIBILITIES

A. Notify mental health representative.

B. Obtain a pertinent history.

   1. Current symptoms (pain, bleeding and swelling, pelvic and other).

   2. Physical injuries inflicted.

   3. Time, date and place of incident.

   4. Age

   5. Nature of sexual acts performed (e.g. vaginal intercourse, sodomy, etc.).

   6. Last menstrual period and length of normal menstrual cycle as well as any menstrual abnormalities.

   7. Parity — if appropriate.

   8. Current contraceptive used by victim; other medications.

   9. Any contraceptive device used in incident.

   10. Last coitus before sexual assault.

   11. Did ejaculation occur? If so, where on patient's body was seminal fluid deposited?

   12. Age of assailant.

   13. Relationship of assailant to victim.

C. Begin physical examination.

   1. Describe emotional status — objective observations.

   2. Record vital signs: T-P-R-BP.

   3. If clothing is damaged, stained or disarrayed, photograph patient before she disrobes.

4. Secure all clothing for police, noting blood stains, secretions or other stains. Place outer garments in separate bag from inner garments.

5. Note name and obtain signature of the police representative receiving clothing.

6. Photograph any external bruises, scratches, or broken nails. Identify patient on each picture. Take fingernail scrapings if material is noted under the nails. Preserve these in container provided by the police.

7. Make Woods lamp examination of suspicious areas for presence of seminal fluid which will flouresce.

8. Comb pubic hair for foreign hairs and fibers using new plastic comb. Place all comb material and comb itself wrapped in lens paper or tissue into an envelope and seal, noting date, patient's name and hospital number. Envelope flap should be signed by the child/parent and the nurse, across the seal.

9. Ask child to place a 2 x 2" piece of sterile gauze in her mouth and saturate it with saliva. No one but the child should touch the gauze. Place the saturated gauze in container provided by police representative.

10. Obtain a urine sample for pregnancy testing, and tests for presence of other medications in the body (to lab).

11. If semen was deposited on the patient's body or in the mouth, obtain the following specimens:
    a. Swab for sperm motility and acid phosphatase determination using a saline moistened swab or cotton tip applicator. Swirl it in 3 cc sterile saline and ring it out against the edge of tube and discard swab. Give to police.

    b. Swab for sperm stain and typing using a saline moistened swab or cotton tip applicator. Smear a clean glass slide which has been labeled with the name, hospital number and date. Place the slide in a bottle of pap smear fixative. Place the swab into a sterile container labeled with the patient's name, date and hospital number. Give to police.

    c. Culture the area for GC using a saline moistened applicator, if indicated. Prepare the child for the physician's exam.

VII. PHYSICIAN RESPONSIBILITIES

A. Review thoroughly the nurse's record and discuss.

B. Establish rapport with the victim and clarify question on nurse's exam PRN.

C. Give a general physical examination looking for signs of injury.

D. Perform a pelvic exam when indicated by age, history and physical findings.

1. External genitalia.

    a. Examination.

    b. GC culture from urethra and rectum into Stewart's Transport Media. Send to lab.

2. Speculum (only when indicated by History and Physical findings).

   a. Use only water for lubricant.

   b. Examination.

   c. Posterior fornix.

      (1) Swab posterior fornix and swirl the swab in 3 ml of sterile saline. Wring out against the edge of the tube and *discard* the swab. This is for sperm motility and acid phosphatase. Secure for evidence.

      (2) Swab posterior fornix and smear a clean glass slide which is placed in pap smear fixative. This is a smear for sperm. Secure for evidence.

      (3) With sterile ring forceps swab the posterior fornix with a 2 x 2 gauze (do not contaminate with perspiration) and place in a labeled container to be given to the police for sperm typing. Secure for evidence.

      (4) Swab the cervix for GC culture, send to lab in transport media for smear.

3. If indicated by preceeding portion of the physical examination or history do a bi-manual examination noting uterine size and pain.

VIII. TREATMENT

A. Physician diagnose and treat physical trauma.

B. Physician and nurse assess emotional status of child/family and provide immediate intervention and make certain that the mental health professional becomes involved. Ongoing needs should be referred to mental health professional.

C. Nurse counsels on available counseling services at the Community Agencies.

D. Nurse arranges follow-up:

   1. Return in 3 days for GC culture.

   2. 1 week visit by mental health professional involved.

   3. Visits as necessary by mental health professional.

   4. 6 week OPD visit for VD check.

IX. POINTS TO REMEMBER

A. All references to assault should be brief and factual. Do not report details of the incident and do not use qualifying language such as "alleged". A good format is "the patient says that . . ."

B. Take time to calm and quiet the patient.

C. Do your most gentle exam.

D. Make no judgmental statements in documentation. Record problem or assessment or impression as "sexual assault exam — interpretation pending lab results".

E. Make arrangements for appropriate medical follow-up.

F. Be certain all specimens are carefully and accurately labeled and identified.

   1. Patient's name.

   2. Patient's hospital number.

   3. Date specimen collected.

   4. Person collecting sample.

   5. Person receiving sample.

G. Assure that family's questions are answered, that they understand the situation and know what to do next.

H. Make sure victim leaves with a family member, friend or police escort to get them home.

C.H.C. 8/18/75
Revised 8/27/75
Revised 9/15/75
Revised 11/13/75
Revised 12/11/75

*Counseling the Child Victim**

by Dr. Patrick F. Sullivan, Ph.D.

In dealing with the child unfortunate enough to have been a victim of sexual assault, the counselor is faced with several difficult areas which will affect her decisions in counseling the victim. These areas include the child's age, the extent of physical pain and injury, the manner in which the act was perpetrated (e.g., force, threats, cajoling, etc.), relationship to the offender, the parental and familial response to the assault.

The parental response in many cases may equal or surpass the child's and the counselor would do well to assess this as quickly as possible since the long term impact is potentially more troublesome for the child victim — especially for the younger child. Parents are likely to feel combinations of grief, anger, and guilt. These feelings may focus on the child, the attacker, or themselves. Assisting them in ventilating and understanding their feelings should be combined with pointing out how these can be helpful or detrimental to the child. At the same time, the counselor should be attempting to make some assessment of the parent's sexual attitudes so that these can be considered in later counseling with the child.

With regard to the child, the age and maturity level are paramount — obviously a fourteen year old will have a better understanding of the attack than a four year old. A first step in counseling the sexually assaulted child is the assessment of the child's perception of the event and emotional reaction to it. Was it enjoyable, neutral, or painful? Does the child understand what happened? Does he/she feel guilt, fear or anxiety regarding it? Chances are good that a child who fails to understand the significance of the attack will manage a good subsequent adjustment so that both counselor and parents need to be cautious about conveying their own anxiety.

If the child understands the event, it is wise to explore the problem areas and assist the child in dealing with them. A tactful discussion of sexual relations as a pleasurable activity appropriate to adults is probably of major importance in order to both assist the child in separating sexuality from violence and in later sexual adjustment.

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Child Rape Victims And Their Families*

Avalie Saperstein

Children comprise approximately one-half of all rape victims seen by WOAR. The child victim differs from the adult victim in two main areas. One, children do not have the cognitive development nor the life experiences to understand and assess a situation as does an adult. Two, children depend on parents for physical and emotional care. For this reason, their feelings, to a great extent, are determined by parental feelings. Therefore, in regards to the child victim, we have the particular tasks of helping the child at her own level understand what is happening to her (not necessarily what has happened) and, most importantly, helping the parents respond to their child in a constructive way.

The younger the victim the more focused WOAR help is on the parents. From our experience, generally, children appear unconcerned about the rape or its consequences (excepting if the child has been terrorized or it is an older child). Children *will* reflect their parents' feelings. Do not hesitate to refer the family to Child Guidance especially where the rape is family related and/or the family responds to their child in a destructive manner.

Following is a brief list of tasks for the WOAR volunteer to keep in mind in dealing directly with children.

1) It is necessary to assess the child's cognitive, life experience age. Once determined, the WOAR volunteer will be able to respond to the child in a way she can understand. Do not be misled by the street-wise young woman.

2) It is necessary to ascertain what the rape means to the child and deal with the rape on that level. To the young victim, rape may mean social ostracism (or acceptance) from peers, intense fear of living in her gang-infested neighborhood, questions about her sexual identity, and so on. For all children, there will be concern about their parents' reactions. Remember, the younger the child the greater the incidence of the rape being family related. The child involved in a family related rape will be particularly concerned about her family believing her and/or possible repercussions in the family.

3) It is necessary to tell the child why she is in the hospital and what is going to happen to her. (She is in the hospital because she may be hurt and the doctor is going to examine her). By making the unknown, known, you will be alleviating some of the fear of the unknown, confusing and frightening situation. Be honest. Be focused on why the child is in the emergency room. Elaborate explanations will be confusing to a child. Explain the pelvic exam and entire medical procedure in language the child can understand, such as, the doctor will examine your bottom. As you speak with her, observe her expressions to determine her understanding. Again, be honest. If you are calm, treating the examination as a normal process, you will alleviate the child's anxiety.

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Following is a brief list of tasks for the WOAR volunteer to keep in mind as she works with the parents of the victim.

1) It is necessary to help the parents focus on their child's pain. Parents' own confused and negative feelings and hangups will cloud the issue. For example, the issue is not whether their daughter should have been on the streets at night, but that their daughter has just experienced a painful situation and she needs their help.

2) In order to help the parents focus on their child's pain, it will be necessary to channel parental feelings constructively. Usually the parents will be in a crisis state also. Provide feedback to counteract parental feelings of guilt. Help them to channel their anger appropriately (prosecution), not at their daughter.

3) It is important to give parents some pointer in how to respond to their daughter so they can provide corrective experiences for her. Stress the importance of parental feelings and attitudes to their daughter's own feelings of self and the rape experience. Encourage the parents to be available to their daughter, not to force the child to talk nor cut off talk. Point out that it is beneficial for the child to continue in her usual routine and activities, and that this may require some parental encouragement.

4) As with any victim, it is also necessary to alleviate the anxiety of the unknown situation by informing parents of legal and medical matters. Be sure that parents understand that the medical examination is for the child's safety and that it provides legal evidence.

INCEST: BACKGROUND AND PROCEDURES*

Prepared for NIP Rape Counseling Center by Pat Mehigan, Debbie Laine, Karen Sando, Judy Schwager

Definition of Incest

Sex Offense Law — 609.365 Incest

Whoever has sexual intercourse with another nearer of kin to him than first cousin, computed by rules of the civil law, whether of the half or the whole blood, with knowledge of the relationship, is guilty of incest and may be sentenced to imprisonment for not more than ten years.

Some thoughts on the definition of Incest:

A. Most of the statistics and studies available deal primarily with (1) the nuclear family and (2) father-daughter incest.

B. Consider an expansion of the definition to include:

1. Broadening family to include those who play the primary role in the family, not necessarily biological father, but stepfather, male guardian, uncle or boyfriend of mother; also primary female role, not necessarily mother but stepmother, female guardian, aunt or girlfriend of father.

2. Incest, like rape, creates many of the same psychological difficulties whether it be actual penetration or the threat or attempt of same.

3. While points #2 and #3 may or may not fit into the legal definition of incest, they do share several commonalities:

    a. A continual presence or condition of physical/sexual violence.

    b. Structure of the family roles each member takes.

    c. Reaction and perception of victim (daughter) to herself, family and the rest of the world.

Voluntary/Involuntary Participant?

Our prime concern is how the victim (daughter) perceives the situation. Our role is not to presume or judge.

The caller/client may perceive the situation as being a desirable, guilt-free relationship except, perhaps, where reconciling behavior with cultural norms. The caller/client may also feel guilt laden for failure of the family to nuture and protect her, possess little worth of self . . . may view it as a traumatic experience. She may also react somewhere in between these extremes or combine a series of reactions which may differ from day to day.

The question of free will or real choice by the daughter is an academic one.

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Let me repeat, our prime concern is how the victim (daughter) perceives the situation. Our role is not to presume or judge.

Important!

Ostensibly, each member of a family which is involved in an incestuous relationship is a "victim". While we may be confronted by any member of this family, we are focusing our attention on the likelihood:

A. That the involved daughter is the primary victim.

B. That she will be the one who calls or comes in.

C. That she will be involved in a father-daughter incestuous relationship.

D. That she will be, usually, an involuntary participant.

> Note: This does not dismiss the occurrence of incestuous relationships which may be viewed by all participants as good. It is just that the material we have covers the former.

Similarities and Differences Between Rape And Incest

Rape and Incest both involve:

A. Sexual violation of another.

B. Active or potential physical violence.

C. Disruption of the victim's sense of well being and ability to deal with the world.

D. Confuses value of self and others, principally men.

Incest takes these qualities and can protract them by several years, from childhood, puberty to adulthood:

A. Constant and continual threat or potential for sexual and physical violence.

B. Disruption/distortion of the "normally" supportive and nuturing roles of parents.

C. Disruption/distortion of the development of a whole, integrated individual being, psychologically, physically, emotionally and sexually.

D. A distorted perception of the outside world and her ability to deal with same.

Take into consideration the roles of all the other members of the family: father, mother, number of daughters still living at home and you have some idea of the dimensions of the situation. Specific perceptions and difficulties the victim may have to cope with will be more completely covered within sections on *Characteristics of Girls Involved in Incest and Procedures.*

Methodology

Available statistics and studies, in addition to being hindered by their concentration on father-daughter incestuous relationships, are further limited. "They are limited by the fact that most studies are of adjudicated offenders." This fact introduces several sources of bias:

A. Lower socio-economic classes are over represented.

B. Dysfunctional families would likewise be over represented.

C. Studies of family structure occur after detection of incest and severe social sanctions have been imposed.

D. The incestuous relationship is of an appreciable duration.

Reference: *Incest: A Selective Review of the Literature*, Irving Benoist

Note: Please keep this in mind when reading this paper.

Overall Family Characteristics

A. Serious disorganization and role disturbance had occurred prior to onset of incestuous relationship . . . primarily mother has moved to a passive or absentee role, dropping maternal and sexual roles. Combine this with dropping of or lack of development of the paternal role and poor impulse control of the father. 86% of a study of adult partners were experiencing socially and emotionally disturbed relationships with their wives.

B. Reclusive family . . . the child victim lives in a secretive home environment. Frequently she cannot have friends in or rarely as overnight guests. Further she is discouraged from mingling closely with neighbors, developing close friendships outside the family, generally discouraged from outside activities or events.

C. May be overly zealous religious family. This type of family frequently stresses the authority of the father figure . . . closeness of the family, heavy dependency relationship.

D. May be strong delineation of right and wrong, good and evil, superimposed upon the children by authoritarian type parent. Fear is an important control.

E. Marriage of incest offenders was typically undertaken at an early age, 18 for the wife and 19 for husband.

F. Eldest daughter usually victim . . . relationship had usually occurred when daughter was 12, father 40.

G. Incestuous relationship usually lasts 3.1 years.

H. Subject families usually earn less than $7,000/year.

I. In one study, crowded living was typical.

J. Most parents had little formal education, yet there is little evidence of being subnormal intellectually. (Between 60-85% of incest fathers and over 75% of daughters had IQ's average or higher.)

Characteristics of Father/Male Parent Role

A. Frequently responds with violent outbreaks of temper and physical violence when their commands are not met.

B. High degree of alcoholism.

C. Personalities of incest fathers differed according to the ages of the daughter participants at time of incest according to one study:

   1. (Ages 10-11) had poor relationship with their own parents, unstable childhood families, premarital sex were ineffectual, non-aggressive, dependent, alcoholic, preoccupation with sex and sporadic workers.

   2. (Ages 12-15) more heterogenuous, sex was not overly important to them, many were alcoholic.

   3. (Ages over 16) typically from large families with many sisters, they engaged in very little premarital sex, were sexually restrained after marriage, were conservative and devout, but had very poor impulse control.

NOTE: In comparing incest fathers with other sex offenders, Gebhard, et. al. could find few differences. Ellis and Bruncale found that incest fathers were no different than other sex offenders in hostility, recidivism, or emotional dependency. However, they were less sexually inhibited than other sex offenders, and were more frequently emotionally immature and alcoholic.

Characteristics of Mother/Female Parent Role

A. Seen as passive and dependent.

B. At time incest initiated, mother has usually withdrawn from sexual and maternal roles.

C. Mother is seen as ill-equipped to handle own personality, let alone personality of husband. As a consequence, she is usually overwhelmed by maternal and wifely responsibilities, especially initiating termination of an incestuous relationship of father and daughter or heading a single household.

D. Mother may help initiate incestuous relationship . . . bringing daughter into sexual role with father in order to maintain family. Others have adopted an illusory/avoidance system to prevent seeing or comprehending relationship.

Factors which sustain an incestuous family

"Although conviction rates for the crime of incest have always been low . . . there is reason to believe that the conviction statistics reveal only a fraction of the occurrence of incestuous relations . . ." ***Incest: A Selective Review of the Literature.*** Irving Benoist.

Direct discovery of incestuous relationships within a family are not common. Whatever meager discoveries made occur principally through secondary causes:

A. The daughter has become pregnant.

B. She becomes a runaway.

C. Alcoholism of father.

D. Report of rape.

E. Family argument.

F. Suicide or attempt, usually by victim.

G. Homicide or attempt, usually by victim.

What are the factors which keep primary victim within family?

A. Victim's feelings of shame and guilt toward mother and/or father.

B. Fear of men.

C. Passive behavior, low value of self.

D. Lack of knowledge of their own rights.

E. Fear removal from home.

F. Breakup of family.

G. Loss of father.

H. Alienation from rest of family.

I. Social isolation of family.

J. Dependency of daughter.

K. Threats to child.

L. Ill equipped to deal with outside world.

M. Fear incest will then occur with next eldest daughter.

N. Confusion about her sexuality.

O. Disturbed relationship of marital partners.

Aftermath

According to one study, fathers confronted with detection frequently deny the incest or if they admit it, attempt to minimize their guilt, and often express surprise that incest is punishable by law. They frequently insist that they have done nothing wrong; some fathers believe sexual access to be one of their parental rights.

Even after incarceration of the fathers, some wives refuse to believe that incest occurred; thus, the father may remain the dominant member of the family, although in prison. Frequently, the cost of the mother's admitting that incest occurred is the dissolution of the family and the mothers in these families are often especially incapable by both background and temperament to head a household. Very often the fathers return to the home and the ingredients which make up a condition for incestuous relationship remain and are either resumed by the eldest daughter or if removed from the home, voluntarily or otherwise, the role is then passed to the next eldest daughter.

Characteristics of Girls Involved in Incest

The following descriptions of girls involved in incestuous relationships may help you recognize them when they call. Most of the victims share some or all of the characteristics listed below:

> She may likely be forced to fill a "mature" role in the family, i.e. the wife's role to the father and, perhaps, the mother's role to younger children. She may feel frustrated and helpless in that she does not have a mother she can depend on. Underlying this appearance of maturity is a feeling of immaturity, lack of self esteem and a fearfulness of the world outside the family.
>
> This poor self-concept is constantly reinforced and she may frequently deny her own needs. She may feel fear and anger towards her father and extend it towards all men. She may be depressed. She may be very confused about sex and feel disgust towards her body and that of a man.

Some hints that may suggest incest to you are:

1. Alcoholism in the family.
2. Poor school work.
3. Excessive parental restrictions.
4. Depression.
5. Frequently young women that run away from home are running from an incestuous environment.

The long-term effects of incest are far reaching. The victim tends to see herself as a sex object and may learn to use sex to manipulate favors. She can also hold other women in contempt.

Generalizations such as "men only want one thing," "all men are animals" are reinforced and, consequently, she may develop a cynical and defensive behavior toward men. Guilt and shame are experienced as well as the feeling of being used. She may also exhibit great anger toward her mother for not protecting her. Sex is something to be kept secret, "don't tell."

Incest usually takes place over a long period of time, from six months to several years. It may take many years of intensive professional counseling to deal with some of the woman's feelings as a result of this experience. Don't try to deal with it all at once.

CAUTION: It is natural for you to feel you want to help her get out of this situation. Do not burden her with your feelings . . . handle the situation judiciously. There are many ways of resolving this type of situation, and not all are the kind of resolution you may have in mind, specifically, running away, homicide or suicide.

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* Speeches given by individuals, text not available.

Children— Maltreatment

Chapter 221

H. F. No. 306

(CODED)

An Act relating to children; requiring reports of maltreatment of minors to be filed by certain individuals; authorizing reports to be filed by citizens under certain circumstances; prescribing penalties for failing to report or falsifying reports; amending Minnesota Statutes 1974, Chapter 626, by adding a section; repealing Minnesota Statutes 1974, Section 626.554.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1974, Chapter 626, is amended by adding a section to read:

626.556 Reporting of maltreatment of minors.

Subdivision 1. Public policy. The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse; to strengthen the family and make the home safe for children through improvement of parental and guardian capacity for responsible child care; and to provide a safe temporary or permanent home environment for physically or sexually abused children.

In addition, it is the policy of this state to require the reporting of suspected physical or sexual abuse of children; to provide for the voluntary reporting of neglect of children; to require the investigation of such reports; and to provide protective and counseling services in appropriate cases.

Subd. 2. Definitions. As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Sexual abuse" means the subjection by the child's parents, guardian, or person responsible for the child's care, to any act which constitutes a violation of Minnesota Statutes, Sections 609.291, 609.292, 609.293, 609.295, or 609.296.

(b) "Neglected child" shall have the meanings defined in Minnesota Statutes, Section 260.015, Subdivision 10. Nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian or other person responsible for his care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child.

(c) "Physical abuse" means:

(i) Any physical injury inflicted by a parent, guardian or other person responsible for the child's care on a child other than by accidental means; or

(ii) Any physical injury that cannot reasonably be explained by the history of injuries provided by the parent, guardian or other person responsible for the child's care.

(d) "Report" means any report received by the local welfare agency pursuant to this section.

Subd. 3. Persons mandated to report. A professional or his delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement who has knowledge of or reasonable cause to believe a child is being physically or sexually abused shall immediately report the information to the local welfare agency or police department. The police department, upon receiving a report, shall immediately notify the local welfare agency. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school or agency.

Any person not required to report under the provisions of this subdivision may voluntarily report to the local welfare agency or police department if he has knowledge of or reasonable cause to believe a child is being neglected or subjected to physical or sexual abuse. The police department, upon receiving a report, shall immediately notify the local welfare agency.

Subd. 4. Immunity from liability. Any person participating in good faith and exercising due care in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

Subd. 5. Falsified reports. Any person who willfully or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

Subd. 6. Failure to report. Any person required by this section to report suspected physical or sexual child abuse who willfully fails to do so shall be guilty of a misdemeanor.

Subd. 7. Report. An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed as soon as possible by a report in writing to the appropriate police department or local welfare agency. Any report shall be of sufficient content to identify the child, the parent, guardian, or other person responsible for his care, the nature and extent of the child's injuries and the name and address of the reporter. Written reports received by a police department shall be forwarded immediately to the local welfare agency.

Subd. 8. Evidence not privileged. No evidence regarding the child's injuries shall be excluded in any proceeding arising out of the alleged physical or sexual abuse on the grounds of either a physician-patient or husband-wife privilege.

Subd. 9. Mandatory reporting to a medical examiner or coroner. When a person required to report under the provisions of

subdivision 3 has reasonable cause to believe a child has died as a result of physical or sexual abuse, he shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency or police department. Medical examiners or coroners shall notify the local welfare agency or police department in instances in which they believe that the child has died as a result of physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the appropriate law enforcement authorities and the local welfare agency.

Subd. 10. **Duties of local welfare agency upon receipt of a report.** The local welfare agency shall immediately investigate and offer protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abuse or neglected minor, and preserving family life whenever possible. When necessary the local welfare agency shall seek authority to remove the child from the custody of his parent, guardian or adult with whom he is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

Subd. 11. **Records.** All records maintained by a local welfare agency under this section, including any written reports filed under subdivision 7, shall be private. The records shall be collected and maintained in accordance with the provisions of Minnesota Statutes, Sections 15.162 to 15.168, and an individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be disclosed only (a) by the local welfare agency if the report is found to be unsubstantiated or (b) by the local welfare agency upon court order if the report is found to be substantiated.

Records maintained by local welfare agencies under this section must be destroyed as follows:

(a) All records relating to reports which, upon investigation, are found to be unsubstantiated shall be destroyed immediately;

(b) All records relating to reports which, upon investigation, are found to be substantiated shall be destroyed seven years after the date of the final entry in the case record; and

(c) All records of reports which, upon initial investigation, cannot be substantiated to the satisfaction of the local welfare agency may be kept for a period of one year. If the local welfare agency is unable to substantiate the report within that period, all records relating to the report shall be destroyed immediately.

Sec. 2. Minnesota Statutes 1974, Section 626.554, is repealed.

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